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No. 14359

United States
Court of Appeals

for the Ninth Circuit

exhibits in custody
of Clerk.

See Vol. 2892
SHIRLEY KREMEN, CARL ROSS, SAMUEL
IRVING COLEMAN, and SIDNEY STEIN-
BERG,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Two Volumes

VOLUME I.

(Pages 1 to 468, inclusive)

Appeals from the United States District Court for the Northern
District of California, Southern Division

FILED

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PAUL P. O'BRIEN,

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, California — 11-15-54 CLERK

No. 14359

United States
Court of Appeals
for the Ninth Circuit

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

GLADSTEIN, ANDERSEN & LEONARD

appeared for Defendants, Shirley Kremen, Carl
Ross and Samuel Irving Coleman,
240 Montgomery Street,
San Francisco, California.

Defendant Sidney Steinberg appeared in pro per.

Attorneys for Defendants and Appellants.

LLOYD H. BURKE,

United States Attorney,

ROBERT H. SCHNACKE,

Assistant United States Attorney,

RICHARD H. FOSTER,

Assistant United States Attorney,

P. O. Bldg., San Francisco, California,

Attorneys for Plaintiff and Appellee.

In the United States District Court for the Northern District of California, Southern Division

No. 33740

UNITED STATES OF AMERICA, Plaintiff,

vs.

SHIRLEY KREMEN, aka LEE KAPLAN; PATRICIA JULIA BLAU, aka JANET CONROY; CARL EDWIN RASI, aka CARL ROSS and ROBERT EDWARD NEWMAN; SAMUEL IRVING COLEMAN, aka WILLIAM B. GORDON; SIDNEY STEINBERG, aka SID STEIN and JOSHUA NEWBERG, Defendants.

INDICTMENT

First Count: (Title 18 U.S.C. 3)

The Grand Jury charges:

1. That on or about the 14th day of October, 1949, Robert G. Thompson was convicted in the United States District Court for the Southern District of New York for the offense of wilfully and knowingly conspiring to (1) organize a society for the overthrow and destruction of the Government of the United States by force and violence; and (2) advocate and teach the overthrow and destruction of the Government of the United States by force and violence; the aforesaid being in violation of Sections 2, 3 and 5 of the Act of June 28, 1940, commonly known as the Smith Act.

2. That on or about the 27th day of August, 1953, in the Northern District of California, in the

vicinity of Twain Harte, Tuolumne County, California, the defendants Shirley Kremen, Patricia Julia Blau, Samuel Irving Coleman, Sidney Steinberg and Carl Edwin Rasi, knowing that the offense aforesaid had been committed and that the said Robert G. Thompson had been convicted of committing the same, did receive, relieve, comfort and assist the said Robert G. Thompson in order to hinder and prevent his apprehension and punishment.

Second Count: (Title 18 U.S.C. 371)

The Grand Jury further charges:

1. That at a time and place to the Grand Jury unknown, in the Northern District of California and elsewhere, the defendants Shirley Kremen, Patricia Julia Blau, Samuel Irving Coleman, Sidney Steinberg and Carl Edwin Rasi, unlawfully, wilfully and knowingly did conspire with each other and with divers other persons to the Grand Jury unknown.

2. That the object of this conspiracy was to commit, in violation of Section 3 of Title 18 United States Code, the offense of receiving, relieving, comforting and assisting Robert G. Thompson, in order to hinder and prevent the apprehension and punishment of the said Robert G. Thompson, while the said defendants well knew that the said Robert G. Thompson had violated Sections 2, 3 and 5 of the Act of June 28, 1940, commonly known as the Smith Act.

3. That in pursuance of said conspiracy and to effect the object thereof in the Northern District of

California, one or more of the defendants herein did further the said conspiracy by the following acts:

Overt Acts

(1) On or about the 20th day of June, 1953, in the office of Morrow Realty Company at Twain Harte, California, the defendant Shirley Kremen, while using the name Lee Kaplan, had a conversation with James Morrow concerning the leasing of a cabin located in the vicinity of Twain Harte, California, and owned by Charles E. Germany.

(2) On or about the 25th day of June, 1953, the said defendant Shirley Kremen, using the name Lee Kaplan, signed a lease for the said cabin at the Morrow Realty Company, Twain Harte, California.

(3) On or about the 1st day of August, 1953, the defendant Sidney Steinberg, while using the name Joshua Newberg, had a conversation with the said Charles E. Germany and Mrs. Velma L. Germany at the said cabin located in the vicinity of Twain Harte, California, and owned by the said Charles E. Germany.

(4) On or about the 6th day of August, 1953, at the San Jose Ford Sales Company, 375 South Market Street, San Jose, California, the defendant Patricia Julia Blau, while using the name Janet Conroy, purchased from Walter J. Olson a 1950 Ford Automobile, California License No. 3G1606.

(5) On or about the 13th day of August, 1953, at the said cabin, the defendant Sidney Steinberg, while using the name Joshua Newberg, had a conversation with the said Charles E. Germany and the

said Velma L. Germany in the presence of Carl Edwin Rasi.

(6) On or about the 20th day of August, 1953, defendant Patricia Julia Blau, using the name Janet Conroy, negotiated a check with Mrs. Vida Westfall at the Twain Harte Market, Twain Harte, California.

(7) On or about the 27th day of August, 1953, the defendants, Shirley Kremen, Samuel Irving Coleman, Sidney Steinberg and Carl Edwin Rasi occupied the said cabin with Robert G. Thompson.

Third Count: (Title 18 U.S.C. 1071)

The Grand Jury further charges:

That on or about the 27th day of August, 1953, the defendants Shirley Kremen, Patricia Julia Blau, Samuel Irving Coleman and Carl Edwin Rasi, with notice and knowledge of the fact that a warrant had been issued for the apprehension of Sid Stein, also known and named herein as Sidney Steinberg, did, in the Northern District of California, in the vicinity of Twain Harte, Tuolumne County, California, harbor and conceal, so as to prevent his discovery and arrest, the said Sid Stein, also known and named herein as Sidney Steinberg, for whose arrest a warrant had been issued pursuant to law by the United States District Court for the Southern District of New York.

Fourth Count: (Title 18 U.S.C. 371)

The Grand Jury further charges:

1. That at a time and place to the Grand Jury unknown, in the Northern District of California

and elsewhere, defendants Shirley Kremen, Carl Edwin Rasi, Patricia Julia Blau and Samuel Irving Coleman, unlawfully, wilfully and knowingly did conspire with each other, with Robert G. Thompson, named herein as co-conspirator but not as a defendant, and with divers other persons to the Grand Jury unknown.

2. That the object of this conspiracy was to commit, in violation of Section 1071 of Title 18 United States Code, the offense of harboring and concealing, so as to prevent his discovery and arrest, Sidney Steinberg, while said defendants well knew that a warrant for his arrest, under the name of Sid Stein, had been issued on the 20th day of June, 1951, pursuant to law by the United States District Court for the Southern District of New York.

3. That in pursuance of said conspiracy and to effect the object thereof, in the Northern District of California, one or more of the defendants herein and Robert G. Thompson named herein as a co-conspirator but not as a defendant, did further the said conspiracy by the following acts:

Overt Acts

(1) On or about the 20th day of June, 1953, at Twain Harte, California, in the office of Morrow Realty Company, defendant Shirley Kremen, using the name Lee Kaplan, had a conversation with James Morrow concerning the leasing of a cabin located in the vicinity of Twain Harte, California, and owned by Charles E. Germany.

(2) On or about the 25th day of June, 1953, the

said defendant Shirley Kremen, using the name Lee Kaplan, signed a lease for the said cabin at the Morrow Realty Company, Twain Harte, California.

(3) On or about the 6th day of August, 1953, at the San Jose Ford Sales Company, 375 South Market Street, San Jose, California, the defendant Patricia Julia Blau, while using the name Janet Conroy, purchased from Walter J. Olson a 1950 Ford Automobile, California License No. 3G1606.

(4) On or about the 13th day of August, 1953, at the said cabin, defendant Carl Edwin Rasi, was present at a conversation between Sidney Steinberg and the said Charles E. Germany and Mrs. Velma L. Germany.

(5) On or about the 20th day of August, 1953, defendant Patricia Julia Blau, using the name Janet Conroy, negotiated a check with Mrs. Vida Westfall at the Twain Harte Market, Twain Harte, California.

(6) On or about the 27th day of August, 1953, defendants Shirley Kremen, Carl Edwin Rasi, Samuel Irving Coleman, and Robert G. Thompson, named as co-conspirator but not as a defendant, occupied the said cabin with Sidney Steinberg.

A True Bill.

/s/ ROBERT JUN,

Foreman

/s/ LLOYD H. BURKE,

United States Attorney

Approved as to Form: Signed R. H. F.

Indictment: (Violation: Title 18 USC 3—Accessory after the fact; Title 18 USC 371—Conspiracy; Title 18 USC 1071—Harboring).

Penalty: First Count: Imprisonment not to exceed 5 years; fine not to exceed \$5,000. Second Count: Imprisonment not to exceed 5 years; fine not to exceed \$10,000. Third Count: Imprisonment not to exceed 6 months; fine not to exceed \$1,000. Fourth Count: Imprisonment not to exceed 6 months; fine not to exceed \$1,000.

Bail: Kremen, \$7,500; Blau, \$5,000; Rasi, \$10,000; Coleman, \$10,000; Steinberg, \$35,000.

[Endorsed]: Filed September 16, 1953.

[Title of District Court and Cause.]

MOTION TO DISMISS

The defendants above-named and each of them move the above-entitled Court for its order dismissing the indictment herein and each count thereof upon each and all of the following grounds:

First Count

1. The first count of the indictment does not state facts sufficient to constitute an offense against the United States in that, among other things:

(a) It fails to allege that Robert G. Thompson was convicted of an offense against the United States.

(b) It fails to allege that Robert G. Thompson

was committing any offense against the United States on or about the 27th day of August, 1953; and it fails to allege that Robert G. Thompson had at any time committed any of the offenses against the United States described in, or embraced within the provisions of, Title 18 U.S.C. 1073.

(c) It fails to allege facts showing how the defendants or any of them knew that Robert G. Thompson had committed an offense against the United States.

(d) It fails to allege facts showing how the defendants or any of them received, relieved, comforted, and assisted Robert G. Thompson.

(e) It fails to allege facts showing how the defendants or any of them hindered or prevented the apprehension and punishment of Robert G. Thompson.

2. The first count of the indictment is so vague and indefinite and so lacking in essential facts as to fail to advise the defendants and each of them of the nature and cause of the accusation against them and each of them in each and every of the particulars set forth above.

3. The first count of the indictment is materially at variance with the statute upon which it is purportedly based (Title 18 U.S.C. 3) in that said count fails to allege that Robert G. Thompson had committed "an offense against the United States".

4. That statute upon which the first count of the indictment is purportedly based (Title 18 U.S.C. 3) is so vague and indefinite and lacking in prior ascertainable standards of guilt as to be unconstitu-

tional on its face; furthermore, said statute, as applied to the defendants and each of them in this case, deprives them and each of them of due process of law, contrary to the Fifth and Sixth Amendments to the Constitution of the United States.

5. The statute upon which the first count of the indictment is purportedly based (Title 18 U.S.C. 3) as applied to the defendants and each of them in this case is a deprivation of the right to political association guaranteed to them and each of them by the First, Ninth and Tenth Amendments to the Constitution of the United States.

6. And for such other grounds as may appear on the face of the indictment and may be argued at the hearing on the within motion.

Second Count

1. The defendants and each of them make part hereof and incorporate herein by reference Paragraphs 1, 2, 3, 4, 5, and 6 directed to the first count of the indictment, and move that the second count of the indictment be dismissed upon each and all of the grounds set out in those paragraphs.

2. The second count of the indictment was not found within three years next after the alleged offense was committed.

Third Count

1. The third count of the indictment does not state facts sufficient to constitute an offense against the United States in that, among other things;

(a) It fails to allege that a warrant had been

issued for the arrest of said Sid Stein under the provisions of any law.

(b) It fails to allege the law, if any, pursuant to which a warrant had been issued for the arrest of Sid Stein.

(c) It fails to allege that Sid Stein was committing any offense against the United States on or about August 27, 1953; and it fails to allege that Sid Stein had committed any of the offenses against the United States described in, or embraced within the provisions of, Title 18 U.S.C. 1073.

(d) It fails to allege facts showing how the defendants or any of them had notice and knowledge that a warrant had been issued for the arrest of Sid Stein.

(e) It fails to allege facts showing how the defendants or any of them harbored or concealed Sid Stein.

(f) It fails to allege facts showing how the defendants or any of them prevented the discovery and arrest of Sid Stein.

2. The third count of the indictment is so vague and indefinite and so lacking in essential facts as to fail to advise the defendants and each of them of the nature and cause of the accusation against them and each of them in each and every of the particulars set forth above.

3. The third count of the indictment is materially at variance with the statute upon which it is purportedly based (Title 18 U.S.C. 1071) in that said

count fails to allege that a warrant had been issued for the arrest of Sid Stein "under the provision of any law".

4. The statute upon which the third count of the indictment is purportedly based (Title 18 U.S.C. 1071) is so vague and indefinite and so lacking in prior ascertainable standards of guilt as to be unconstitutional on its face; furthermore, said statute, as applied to the defendants and each of them in this case, deprives them and each of them of due process of law, contrary to the Fifth and Sixth Amendments to the Constitution of the United States.

5. The statute upon which the third count of the indictment is purportedly based (Title 18 U.S.C. 1071) as applied to the defendants and each of them in this case is a deprivation of the right to political association guaranteed to them and each of them by the First, Ninth and Tenth Amendments to the Constitution of the United States.

6. And for such other grounds as may appear on the face of the indictment and may be argued at the hearing on the within motion.

Fourth Count

1. Defendants and each of them make part hereof and incorporate herein by reference Paragraphs 1, 2, 3, 4, 5 and 6 directed to the third count of the indictment, and move that the fourth count of the indictment be dismissed on each and all of the grounds set out in those paragraphs.

Dated: This 22nd day of October, 1953.

Respectfully submitted,

GLADSTEIN, ANDERSEN &
LEONARD

/s/ By NORMAN LEONARD,
Attorneys for Defendants

[Endorsed]: Filed October 22, 1953.

[Title of District Court and Cause.]

MOTION FOR DISCOVERY AND
INSPECTION

The defendants and each of them move, pursuant to Rule 16, F.R.Crim.P., for an order directing the United States Attorney to permit the defendants and each of them, or their counsel, within ten days of said order, or in no event less than thirty days before the trial of this cause, to inspect and copy or photograph all books, papers, documents or tangible objects obtained from or belonging to the defendants and each of them, or obtained from others by seizure or by process.

Dated: This 22nd day of October, 1953.

Respectfully submitted,

GLADSTEIN, ANDERSEN &
LEONARD,

/s/ By NORMAN LEONARD,
Attorneys for Defendants

[Endorsed]: Filed October 22, 1953.

[Title of District Court and Cause.]

MOTION FOR BILL OF PARTICULARS

The defendants and each of them move for an order directing the United States Attorney to furnish a bill of particulars pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, and within ten days after the entry of the order therefor, with respect to the following matters:

1. With respect to Count One:

(a) How or in what manner did the defendants and each of them know or obtain knowledge that Robert G. Thompson had been convicted of committing an offense against the United States.

(b) How or in what manner did the defendants and each of them receive, relieve, comfort and assist Robert G. Thompson.

(c) How or in what manner did the defendants and each of them hinder or prevent the apprehension and punishment of Robert G. Thompson.

2. With respect to Count Two:

(a) Defendants and each of them make part hereof and incorporate herein by reference Paragraphs (a), (b), and (c) directed to the first count of the indictment, and move that a bill of particulars as therein requested be also furnished respecting the same matters insofar as the second count of the indictment is concerned.

(b) How or in what manner did the overt acts alleged further the conspiracy in the said second count alleged.

3. With respect to Count Three:

(a) How or in what manner did the defendants and each of them have notice or knowledge of the fact that a warrant had been issued for the apprehension of Sid Stein.

(b) How or in what manner did the defendants and each of them harbor and conceal Sid Stein.

(c) How or in what manner did the defendants and each of them prevent the discovery and arrest of Sid Stein.

4. With respect to Count Four:

(a) Defendants and each of them make part hereof and incorporate herein by reference Paragraphs (a), (b), and (c) directed to the third count of the indictment, and move that a bill of particulars as therein requested be also furnished respecting the same matters insofar as the fourth count of the indictment is concerned.

(b) How or in what manner did the overt acts alleged further the conspiracy in the said fourth count alleged.

Dated: This 22nd day of October, 1953.

Respectfully submitted,

GLADSTEIN, ANDERSEN &
LEONARD,

/s/ By NORMAN LEONARD,
Attorneys for Defendants

[Endorsed]: Filed October 22, 1953.

[Title of District Court and Cause.]

MOTION FOR THE ISSUANCE OF
PRETRIAL SUBPOENA

Defendants and each of them move, pursuant to Rule 17(c), F.R.Crim.P., for the issuance by a judge of this Court of a subpoena directed to the United States Attorney commanding him within ten days of service of the said subpoena, and in no event less than thirty days before the trial of this cause, to produce for the inspection of, and copying by, defendants and each of them and their counsel, all books, papers, documents and objects (except memoranda prepared by government counsel, documents or papers solicited by or volunteered to government counsel which consist of narrative statements or memoranda of interviews), obtained by government counsel in any manner other than by seizure or process (1) in the course of the investigation by the grand jury which returned the indictment herein; and (2) in the course of the government's preparation for the trial of this cause, and if such books, papers, documents or objects (a) have been presented to the grand jury; or (b) are to be offered as evidence upon the trial of the defendants and each of them under the indictment; or (c) prove, or tend to prove, any allegation or charge in the indictment, or disprove or tend to disprove any such allegation or charge.

Dated: This 22nd day of October, 1953.

Respectfully submitted,

GLADSTEIN, ANDERSEN &
LEONARD,

/s/ By NORMAN LEONARD,
Attorneys for Defendants

[Endorsed]: Filed October 22, 1953.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR THE RETURN OF SEIZED PROPERTY

To the Plaintiff Above-named, and to Lloyd H.
Burke, Esq., its Attorney:

Please Take Notice that defendants herein, through their counsel Gladstein, Andersen & Leonard, will move the above-entitled Court in the Master Calendar Department thereof, Hon. Michael J. Roche presiding, at the Post Office Building, Seventh and Mission Streets, San Francisco, California, on the 8th day of February, 1954, at the hour of 10:00 o'clock a.m. of said day or as soon thereafter as counsel may be heard, for an order directing that all clothing, books, papers, documents, or other tangible objects obtained from the possession of the defendants Shirley Kremen, Carl Edwin Rasi, Samuel Irving Coleman and Sidney Steinberg in the cabin located in the vicinity of Twain Harte, Tuolumne County, California, be re-

turned to said defendants through their attorneys herein.

This motion will be made upon the affidavit of Sidney Steinberg, defendant herein, attached hereto, and upon all of the pleadings and proceedings heretofore had herein. The ground asserted is that the above-described search and seizure without a search warrant was unreasonable, illegal and void in violation of Articles IV and V of the United States Constitution.

GLADSTEIN, ANDERSEN &
LEONARD,

/s/ By RICHARD GLADSTEIN,
Attorneys for Defendants

AFFIDAVIT FOR THE RETURN OF
SEIZED PROPERTY

State of California,
City and County of San Francisco—ss.

Sidney Steinberg, being first duly sworn, deposes and says:

He is a defendant in the above-entitled action and respectfully makes the within application on behalf of himself and defendants Shirley Kremen, Carl Edwin Rasi, and Samuel Irving Coleman that the property seized by certain agents of the Federal Bureau of Investigation whose true names are unknown to these defendants, in the course of a search of a certain cabin located in the vicinity of Twain Harte, Tuolumne County, California, after an ar-

rest by said agents of the defendants herein, be returned to the attorneys for defendants herein.

On the 27th day of August, 1953, affiant was arrested at the above-mentioned cabin together with all the defendants herein except defendant Patricia Janet Blau. Subsequently all the defendants herein were charged with a violation of Title 18 U.S.C. §3. All of the defendants herein, except affiant, were also charged with a violation of 18 U.S.C. §1071.

The aforesaid agents seized items including, but not limited to, clothing, books, papers, documents and other tangible objects. A few items have been returned to defendants above-named.

The property seized was in no way connected with the crime alleged in this action. The items seized were neither the instrumentalities or means by which the offenses alleged herein were allegedly committed, nor property the possession of which is criminal, nor the fruits of the offenses herein alleged.

The aforesaid search and seizure was made by certain of said agents against the will of the defendants above-named and out of their presence. No search warrant was served or displayed by the said agents.

The aforesaid search and seizure was unwarranted and illegal in that it violates the Fourth Amendment to the Constitution of the United States, and the retention of any property seized infringes upon the privilege against self-incrimination as guaranteed by the Fifth Amendment to the Constitution of the United States.

Your affiant is informed and believes and therefore asserts upon such information and belief that the aforesaid agents had ample time to secure search warrants prior to the arrests made in this action, if any legal basis therefor existed.

Wherefore, affiant respectfully prays for an order that all property taken and seized from the above-named defendants as the result of the search of the aforesaid cabin by said agents be returned to the above-named defendants through their attorneys herein.

/s/ SIDNEY STEINBERG

Subscribed and sworn to before me this 3rd day of February, 1954.

[Seal] /s/ PEARL STOCKWELL,
Notary Public in and for the City and County of
San Francisco, State of California.

Acknowledgment of Service attached.

[Endorsed]: Filed February 4, 1954.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR THE RETURN OF
SEIZED PROPERTY AND ITS SUPPRES-
SION AS EVIDENCE

To the Plaintiff above-named, and to Lloyd H.
Burke, its Attorney:

Please Take Notice that defendant Shirley Kremen, through her counsel, Gladstein, Andersen & Leonard, will move the above-entitled Court in the Master Calendar Department thereof, Hon. Michael J. Roche presiding, at the Post Office Building, Seventh and Mission Streets, San Francisco, California, on the 5th day of April, 1954, at the hour of 10:00 o'clock a.m. of said day or as soon thereafter as counsel may be heard, for an order directing that certain property, to-wit: all money, clothing, books, papers, documents or other tangible objects which were taken on or about the 27th day of August, 1953, from a certain residence located in the vicinity of Twain Harte, Tuolumne County, California, which said residence was then and there leased to defendant Shirley Kremen under the name of Lee Kaplan be returned to said defendant Shirley Kremen through her attorneys herein and be suppressed as evidence in this proceeding as against the defendants or any of them.

This motion will be made upon evidence to be adduced at the time of hearing on this motion, upon the memorandum of points and authorities submitted herewith, and upon all of the pleadings, rec-

ords, and files herein. The grounds asserted are that the search and seizure of the above-described property were made pursuant to an illegal arrest; against the will and without the consent of defendant Shirley Kremen or any of the above-mentioned defendants; without either a search warrant or any other authority, and were unreasonable, illegal and void in violation of Articles IV and V of the United States Constitution.

GLADSTEIN, ANDERSEN &
LEONARD,

/s/ By RICHARD GLADSTEIN,
Attorneys for Defendants

Acknowledgment of Service attached.

[Endorsed]: Filed March 26, 1954.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR THE RETURN OF
SEIZED PROPERTY AND ITS SUPPRES-
SION AS EVIDENCE

To the Plaintiff above named, and to Lloyd H.
Burke, Esq., its Attorney:

Please Take Notice that defendants herein, through their counsel, Messrs. Gladstein, Andersen & Leonard, will move the above-entitled Court in the Master Calendar Department thereof, Honorable Michael J. Roche presiding, at the Post Office Building, Seventh and Mission Streets, San Fran-

cisco, California, on the 5th day of April, 1954, at the hour of 10:00 o'clock a.m. of said day, or as soon thereafter as counsel may be heard, for an order directing that all clothing, books, papers, documents, or other tangible objects obtained from the possession of defendant Patricia Julia Blau in the automobile referred to in the affidavit of said defendant Blau, attached hereto, be returned to said defendant Blau through her attorneys herein, and that said property be suppressed as evidence in any criminal proceeding.

This motion will be made upon the affidavit of Patricia Julia Blau, defendant herein, attached hereto, and upon all of the pleadings and proceedings heretofore had herein. The ground asserted is that the above-described search and seizure without a search warrant was not pursuant to a legal arrest and was unreasonable, illegal and void in violation of Articles IV and V of the United States Constitution.

GLADSTEIN, ANDERSEN &
LEONARD

/s/ By RICHARD GLADSTEIN,
Attorneys for Defendants

AFFIDAVIT FOR THE RETURN OF SEIZED PROPERTY

State of California,
County of Los Angeles—ss.

Patricia Julia Blau, being first duly sworn, deposes and says:

She is a defendant in the above-entitled action and respectfully makes the within application so that the search of a certain automobile made in the above-entitled action be declared unreasonable, illegal and void, and that the United States attorney be precluded from using the evidence against affiant.

On the 27th day of August, 1953, affiant was arrested approximately eight and one-half miles south of the City of Stockton, County of San Joaquin, State of California. In connection with that arrest, affiant has been charged with violations of Title 18 U.S.C. §§ 3 and 1071.

Said arrest was made by agents of the Federal Bureau of Investigation whose true names are unknown to your affiant. Your affiant was then and there the occupant of the aforesaid automobile, which said agents searched. Said agents seized and took into their custody certain of the contents of said automobile. The aforesaid agents have not returned certain items of seized property including, but not limited to, clothing, books, papers, documents and tangible objects which the said automobile contained. No search warrant was served or displayed by the aforesaid agents making the search, and the search was conducted over the protest and against the will of affiant.

The aforesaid search and seizure was unwarranted and illegal in that it violates the Fourth Amendment to the Constitution of the United States, and the retention of any property seized infringes upon the privilege against self-incrimina-

tion as guaranteed by the Fifth Amendment to the Constitution of the United States.

Your affiant is informed and believes and therefore asserts upon such information and belief that the aforesaid agents had ample time to secure search warrants prior to the arrests made in this action, if any legal basis therefor existed.

Wherefore, affiant respectfully prays for an order that all property taken and seized from the above-named defendants as the result of the search of the aforesaid automobile by said agents be returned to affiant through her attorneys herein.

PATRICIA JULIA BLAU

Subscribed and sworn to before me this 8th day of February, 1954.

[Seal] /s/ J. ALLAN FRANKEL,
Notary Public in and for the City and County of
Los Angeles, State of California.

Acknowledgment of Service attached.

[Endorsed]: Filed March 26, 1954.

[Title of District Court and Cause.]

ORDER

Defendants have petitioned the Court to order the return of property seized by United States agents while engaged in lawfully arresting defendants. The government agents conducted the search and seizure without first obtaining a search warrant. The United

States moved to have the Court strike the Motion to Return on the ground that it did not state enough facts to establish a basis for relief. Defendants' motion is supported only by one affidavit filed and signed by defendant Sidney Steinberg on behalf of himself and defendants Kremen, Rasi and Coleman. Affiant does not allege that he owned or otherwise lawfully occupied the premises searched; nor does he identify the items of property seized, if any, which he, rather than the other defendants or third parties, owned or had in his possession.

It is elementary that the Fourth Amendment may be invoked only by one whose rights are violated. Accordingly, defendant Steinberg may complain of a search and seizure only if his abode was searched and his property seized. *United States vs. Jeffers*, 342 U. S. 48 (1951). Moreover, the Court is unwilling to accept an affidavit made by defendant Steinberg in support of alleged Constitutional violations suffered by the other defendants.

Defendants, in support of their motion, rely strongly upon the case of *United States vs. Lerner*, 100 F. Supp. 765 (1951) decided by this Court. Their reliance is misplaced. That case is distinguishable. It arose on a motion to suppress certain evidence. The Court there had the benefit of testimony, rather than mere affidavits, which established that Lerner was the sole, lawful tenant of the premises searched and that the property seized was in Lerner's possession. If the search was unlawful, therefore, Lerner was the one entitled to complain.

Defendants' counsel moreover contends that the

defendants cannot make the requisite showing because the Government has in its possession the only list of property seized in the course of making the arrest. There is some merit in that contention. The Federal Bureau of Investigation, the seizing agency, made a detailed summary of the property seized. Upon the Government's admission that the summary contained no information, the divulgence of which would endanger the security of the United States, the Court is of the view that the summary should be made available to defendants in order to refresh their recollection should they choose to renew this motion buttressed by a proper showing.

The Court expresses no opinion at this juncture as to the legality of the search and seizure nor whether a Motion To Return could in a case like this be considered by the Court upon mere affidavits rather than upon evidence.

Defendants' motion is denied. The Government's motion is granted. Defendants may, upon demand, have a copy of the summarized list of items seized, consisting of twenty-five (25) pages, which was sent to the United States Attorney for the Northern District of California with a cover sheet bearing the date of February 8, 1954 and the signature of William M. Whelan, Special Agent in Charge.

So Ordered.

Dated: February 9th, 1954.

/s/ EDWARD P. MURPHY,
United States District Judge

[Endorsed]: Filed February 9, 1954.

[Title of District Court and Cause.]

DEFENDANTS' PROPOSED INSTRUCTIONS

Defendants' Proposed Instruction No.....

Ladies and Gentlemen of the Jury:

It becomes my duty as Judge to instruct you concerning the law applicable to this case, and it is your duty as jurors to follow the law as I shall state it to you.

The function of the jury is to try the issues of fact that are presented by the allegations of the indictment filed in this court and the defendants' pleas of "not guilty". This duty you should perform uninfluenced by pity for the defendants or by passion or prejudice against them. You must not suffer yourselves to be biased against the defendants because of the fact that he or she has been arrested for this offense, or because an indictment has been filed against him or her, or because he or she has been brought before the court to stand trial. None of these facts is evidence of their guilt, and you are not permitted to infer or to speculate from any or all of them that he or she is more likely to be guilty than innocent.

You are to be governed solely by the evidence introduced in this trial and the law as stated to you by me. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the prosecution and the defendants have a right to demand, and they do demand and expect, that you will conscienti-

ously and dispassionately consider and weigh the evidence and apply the law of the case, and that you will reach a just verdict, regardless of what the consequences of such verdict may be. That verdict must express the individual opinion of each juror.

CALJIC 1.

People vs. Worden, 113 Cal. 569, 45 P. 844.

People vs. Powell, 83 Cal.App. 62, 256 P. 561.

Defendants' Proposed Instruction No.

You are hereby instructed that in the case of certain crimes it is necessary that in addition to the intended act which characterizes the offense, the act must be accompanied by a specific or particular intent without which such a crime may not be committed.

Thus in the crime charged in the first count of the indictment herein a necessary element is the existence in the minds of the defendants of the specific intent to hinder and prevent the apprehension and punishment of Robert G. Thompson, and unless such intent so exists, the crime so charged is not committed.

Adopted from CALJIC 72-C.

Defendants' Proposed Instruction No.

In this case the prosecution relies upon circumstantial evidence. I instruct you that where reliance is placed by the prosecution on circumstantial evidence, the circumstances that have been shown must not only be consistent with guilt, but inconsistent with every reasonable hypothesis of innocence, be-

fore you are permitted to convict. In other words, if after a full consideration of the evidence, you find that the circumstances relating to any particular defendant or defendants are such that they are consistent with any one or more possible and reasonable hypotheses or suppositions of innocence, then it is your duty to acquit such defendant or defendants of the charge.

Paddock vs. United States, 79 F.2d 872, 876 (CCA 9, 1935).

Defendants' Proposed Instruction No.....

Before you can find any defendant guilty you must be satisfied beyond reasonable doubt from the evidence that it has been shown that such defendant had specific knowledge of the fugitive status of any alleged fugitive, and that such person was a fugitive from federal process issued under a particular federal statute. It is not enough for the prosecution to show that the conduct or state of mind of some defendant exhibits general malevolence. Nor is it enough for the prosecution to show suspicious circumstances, or even knowledge on the part of a defendant, that the alleged fugitives were evading officers in general. Before a defendant can be convicted, it must be shown from the evidence that such defendant had knowledge that the person charged with being a fugitive was wanted by the federal authorities for the violation of some particular statute.

Fulbright vs. United States, 91 F.2d 210 (CCA 8, 1937).

Defendants' Proposed Instruction No.....

I instruct you that the words "harbor" or "conceal" are active verbs which have the fugitive as their object. Passive conduct on the part of any defendant would therefore not measure up to the requirement of harboring or concealing.

Also, not every piece of active conduct on the part of a defendant in relationship to an alleged fugitive would constitute harboring or concealing. In other words, the law involved in this case does not prohibit every form of assistance to a fugitive. Being in the fugitive's presence, or indeed giving him various forms of assistance, would by themselves not constitute a violation of the law. For example, making a payment of money to a fugitive, which is to be used by the fugitive in any way which he may choose, does not constitute a concealment or harboring within the meaning of the statute.

United States vs. Shapiro, 113 F.2d 891 (CCA 2, 1940).

Defendants' Proposed Instruction No.....

Under the statute here involved, it is not a criminal offense for a defendant to remain silent after knowledge of the commission of the crime of a fugitive. The defendants are not being charged, and it would not be proper for you to find them guilty, of a failure to report or denounce any alleged fugitive. Before any of them can be found guilty in this case, you must find in accordance with my instructions and based upon the evidence, that some af-

firmative act or acts were committed toward the concealment of the alleged offender.

United States vs. Farrar, 38 F.2d 515 (DC Mass., 1930).

Defendants' Proposed Instruction No.....

Under the law involved in this case, an accessory after the fact is a person who, knowing that a criminal offense has been committed, receives, relieves, comforts or assists the guilty person in order to hinder his apprehension, trial or punishment. However, I charge you that this statute defining accessory after the fact is not the same as the statute on harboring and concealment, and that the two offenses are separate and distinct. In the case of accessories after the fact, the acts of Robert Thompson, alleged to be the principal, in committing the substantive offense alleged in this case, and the acts of an accessory after the fact thereto, are one continuous criminal transaction. Therefore the acts of the two—that is the principal and the accessory, constitute a single offense committed by them jointly, one acting as principal and the other as accessory after the fact.

If therefore, you find that any defendant has not conducted himself in such a manner as to participate with Robert Thompson in the commission of the substantive offense of which he was charged and convicted, then you may not find such defendant guilty of being an accessory after the fact thereto.

Skelly vs. United States, 76 F.2d 483 (CCA 10, 1935).

Defendants' Proposed Instruction No.....

In order to make out the offense of harboring, as that term is used in this statute, it is necessary that the person charged be shown to have provided shelter or other assistance in a clandestine manner, and with the intent and for the purpose stated to you.

In order to make out a case of concealment, as that term is used in the statute, it is necessary for the prosecution to prove conduct on the part of a defendant that shows that such defendant tried to shield the alleged fugitive from observation and to prevent the discovery of such fugitive.

Susnjar vs. United States, 27 F.2d 223 (CCA 6, 1928).

Defendants' Proposed Instruction No.....

I instruct you that the mere act of giving shelter to a fugitive does not in and of itself constitute a concealment or harboring in violation of the law, unless the person providing the shelter has knowledge of the fugitive status of the fugitive, and participates in conduct that shows surreptitious concealment of the fugitive.

United States vs. Mack, 112 F.2d 290 (CCA 2, 1940).

Defendants' Proposed Instruction No.....

To harbor or conceal a fugitive in violation of the statute, the act or acts done must evince an intention to elude the vigilance of the law or its agents, and the act done must be calculated to attain that object. Merely to relieve the hunger of a fugitive

would not constitute a violation of the statute, unless accompanied by acts showing a determination to disregard the law in the manner I have outlined to you. Treating a fugitive on the ordinary principles of humanity, such as conversing with him or relieving his hunger or thirst, or in administering to his comfort, does not in and of itself constitute a violation of law. It is only when such conduct, taken with other evidence and all of the circumstances of the case, are so marked in character as to show both an intention to elude the vigilance of the law and a calculation to attain such an object, that a concealment or harboring may be found in violation of the statute.

Jones vs. Van Zandt, 13 F.Cas. 1040, 1043, 1044,
No. 7501.

Defendants' Proposed Instruction No.....

I have instructed you that it is necessary, before you can find any defendant guilty of the charge of conspiracy, that the prosecution shall have proved to your satisfaction and beyond reasonable doubt that at least one overt act was committed which was in furtherance of the alleged conspiracy. An overt act which is not in furtherance of the alleged conspiracy will not support a conviction. In other words, before a conspiracy can be supported by any evidence of overt act, it must be shown to you that such overt act was such as to convince you that it was intended and calculated by such overt act to elude the vigilance of the law.

Jones vs. Van Zandt, 46 U.S. 215.

Defendants' Proposed Instruction No.....

As used in the statutes involved in this case, the word "conceal" means to hide, to secrete, or to keep out of sight. Therefore, the mere presence of a fugitive in one's home, or the mere association between a defendant and a fugitive, does not constitute concealment, unless you find from the evidence that such defendant engaged in conduct constituting a hiding or secreting of the fugitive, or keeping him out of sight.

The word "harbor" as used in the statute involved in this case means to give lodging and care to a fugitive after secreting him. In other words, some physical act tending to the secretion of the body of the fugitive is essential before the offense of harboring or concealment can be made out.

It is also necessary that it be shown that such acts of concealment or harboring, if any you find, were committed knowingly and wilfully for the purpose of bringing about such concealment, with the intent to shield the fugitive from the law, and only after knowledge of the existence of the person concealed as a fugitive from justice.

Firpo vs. United States, 261 U.S. 850, (CCA 2, 1919).

Defendants' Proposed Instruction No.....

Like every other case tried in a court of justice, this one should be decided according to the law and the evidence. It cannot be disguised that the subject of Communism is at this time a fruitful source of public agitation. Indeed, it has become a chief ele-

ment of political excitement in our country. Whatever may be your individual views of this subject, it is clear that you will best acquit yourselves of the responsibility now resting upon you, by taking care that the rights of the parties to this action are in no way affected by the existing state of public feeling on the question of Communism.

Driskill vs. Parrish, 7 F.Cas. 1100, No. 4089.

Defendants' Proposed Instruction No.....

I instruct you that the statutes involved in this case do not impose any obligation on any person whatever to aid or assist in the capture of a fugitive.

Driskill vs. Parrish, 7 F.Cas. 1095, No. 4088.

Defendants' Proposed Instruction No.....

To establish the charge of harboring and concealing against any particular defendant there must be satisfactory proof that he or she, with full knowledge that the person or persons harbored were fugitives, concealed them with the intent to elude the vigilance of the law and to defeat the law's claim.

Driskill vs. Parrish, 7 F.Cas. 1093, No. 4087.

Defendants' Proposed Instruction No.....

I instruct you that mere association with a conspirator or conspirators in matters not connected with the unlawful undertaking charged in the indictment does not make such a person a conspirator, even though he or she may know that an unlawful

undertaking is in the making with those with whom he associates. The crime of conspiracy requires that two or more persons combine or confederate with each other for the particular purpose of committing a public offense. Therefore mere association between a defendant and a conspirator does not make such defendant guilty, even though such defendant knows that the conspirator is engaged in unlawful activities. It is only when a defendant associates with a conspirator for the purpose of committing a public offense, and engages in conduct calculated to achieve an unlawful objective, that such a defendant may be found guilty of the offense of conspiracy.

Butler vs. United States, 197 F.2d 561, 564
(CCA 10, 1952).

Defendants' Proposed Instruction No.....

The word "knowingly," as used in my instructions, imports only a knowledge of the existence of the facts in question, when those facts are such as bring the act or omission within the provision of the law. The word does not require in its meaning any knowledge of the unlawfulness of such act or omission.

CALJIC 76.

Defendants' Proposed Instruction No.....

In this case, you must decide separately the question of the innocence or guilt of each of the several defendants. If you cannot agree upon the innocence or guilt of all the defendants, but do agree as to the innocence or guilt of one or more of them, you must

render a verdict as to the one or more upon whose innocence or guilt you do agree.

CALJIC 93.

Defendants' Proposed Instruction No.

Each count set forth in the indictment charges a separate and distinct offense. You must consider the evidence applicable to each alleged offense as though it were the only accusation before you for consideration, and you must state your finding as to each count in a separate verdict, uninfluenced by the mere fact that your verdict as to any other count or counts is in favor of, or against, the defendant. He may be convicted or acquitted upon any or all of the offenses charged, depending upon the evidence and the weight you give to it, under the court's instructions.

CALJIC 112.

Defendants' Proposed Instruction No.

The word "wilfully", when applied to the intent with which an act is done or omitted and as used in my instructions, implies simply a purpose or willingness to commit the act or to make the omission in question. The word does not require in its meaning any intent to violate law, or to injure another, or to acquire any advantage.

CALJIC 75.

People vs. O'Brien, 96 Cal. 171, 176, 31 P. 45, 46, 47.

People vs. Settles, 29 Cal.App. 2d 781, 785, 78 P.2d 274, 276.

Green vs. Stewart, 106 Cal.App. 518, 528, 289 P. 940, 944.

People vs. Westmire, 71 A.C.A. 573, 162 P.2d 988.

Defendants' Proposed Instruction No.....

In every crime or public offense there must exist a union or joint operation of act and intent. To constitute criminal intent it is merely necessary that a person intend to do an act which, if committed, will constitute a crime. When a person intentionally does that which the law declares to be a crime, such person is acting with criminal intent even though he may not know that such act is unlawful and even though there be no bad motive.

CALJIC 71.

People vs. McClennege, 195 Cal. 445, 234 P. 91.

People vs. Gonzales, 74 Cal.App. 341, 240 P. 291.

People vs. Womble, 67 Cal.App. 2d 885, 155 P.2d 838.

Defendants' Proposed Instruction No.....

Duly qualified experts may give their opinions on questions in controversy at this trial. To assist you in deciding such questions, you may consider the opinion with the reasons stated therefor, if any, by the expert who gives the opinion. You are not bound to accept the opinion of an expert as conclusive, but you should give to it the weight to which you shall find it to be entitled. You may disregard

any such opinion, if you find it to be unreasonable.

CALJIC 56.

People vs. Williamson, 134 Cal.App. 775, 780,
26 P.2d 681, 683.

People vs. Brac, 73 A.C.A. 711, 167 P.2d 535.

Defendants' Proposed Instruction No.

You are not bound to decide in conformity with the testimony of a number of witnesses which does not produce conviction in your mind, as against the declarations of a lesser number or a presumption or other evidence which appeals to your mind with more convincing force. This rule of law does not mean that you are at liberty to disregard the testimony of the greater number of witnesses merely from caprice or prejudice, or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence.

CALJIC 53.

Huddy vs. Chronicle Publishing Co., 15 Cal. 2d
554, 103 P.2d 421.

Defendants' Proposed Instruction No.

You are the exclusive judges of the credibility of the witnesses. A witness is presumed to speak the truth. This presumption, however, may be overcome by contradictory evidence; by the manner of the

witness on the stand, the degree of intelligence exhibited by him, and the manner in which he testifies; by the character of his testimony; by evidence showing his motives, an interest in the outcome of the case, or bias or prejudice against one of the parties; by evidence that on some former occasion he made a statement or statements inconsistent with his present testimony.

CALJIC 52.

People vs. Amaya, 134 Cal. 531, 539, 66 P. 694, 797.

Defendants' Proposed Instruction No.....

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus whether or not he does testify rests entirely in his own decision. In deciding whether or not to testify the defendant may choose to rely on the state of the evidence and upon the failure, if any, of the prosecution to prove every essential element of the charge against him, and no lack of testimony on the defendant's part will supply a failure of proof by the prosecution so as to support by itself a finding against him on any such essential element. The failure of a defendant to deny or explain evidence against him does not create any presumption of guilt, and it does not by itself warrant any inference of guilt, nor does it relieve the prosecution of its burden of proving every essential element of the crime, and the guilt of the defendant beyond a reasonable doubt.

Defendants' Proposed Instruction No.....

In the trial of this case there were instances when certain evidence was admitted as against one or more of the defendants, but denied admission as against others; and there were instances when certain evidence was admitted in favor of one or more of the defendants, but denied admission in favor of others.

It may be difficult for you, when considering the case for or against any one certain defendant, to disregard completely any evidence that was admitted only as to another, but that is your plain duty with respect to evidence not admitted by the Court as against or in favor of a certain defendant, and you must try conscientiously to so treat such a situation.

CALJIC 39.

Defendants' Proposed Instruction No.....

I instruct you further that you are not permitted, on circumstantial evidence alone, to find the defendants guilty of any crime charged against them unless the proved circumstances not only are consistent with the hypothesis that the defendants are guilty of the crime, but are irreconcilable with any other rational conclusion. In other words, if, on your consideration of the entire case the evidence is consistent with the hypothesis that any one or more of the defendants was innocent of any of the offenses charged against him or her, your verdict should be in favor of such defendant or defendants

as to each and every count concerning which you reach that conclusion.

CALJIC 29, as modified.

Defendants' Proposed Instruction No.....

If the evidence in this case as to any particular count is susceptible of two constructions or interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the defendants, and the other to their innocence, it is your duty, under the law, to adopt that interpretation which will admit of the defendants' innocence, and reject that which points to his or her guilt.

You will notice that this rule applies only when both of the two possible opposing conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other to be unreasonable, it would be your duty to adhere to the reasonable deduction and to reject the unreasonable, bearing in mind, however, that even if the reasonable deduction points to a defendant's guilt, the entire proof must carry the convincing force required by law to support a verdict of guilt.

CALJIC 26.

People vs. Clark, 145 Cal. 727, 728, 79 P. 434.

People vs. Newland, 15 Cal. 2d 678, 104 P.2d 778.

People vs. Ratterman, 38 Cal.App. 2d 598, 600, 101 P.2d 750, 751.

People vs. Hatchett, 63 Cal.App. 2d 144, 146 P.2d 469.

People vs. Nunn, 65 Cal.App. 2d 188, 150 P.2d 476.

People vs. Rayol, 65 Cal.App. 2d 462, 150 P.2d 812.

People vs. Blanks, 67 Cal.App. 2d 132, 153 P.2d 449.

Defendants' Proposed Instruction No.....

Neither the prosecution nor the defense is required to call as witnesses all persons who are shown to have been present at any of the events involved in the evidence, or who may appear to have some knowledge of the matters in question in this trial; nor is the prosecution or defense required to produce as exhibits all objects or documents that have been referred to in the testimony, or the existence of which may have been suggested by the evidence.

CALJIC 23.

People vs. Powell, 83 Cal.App. 62, 67, 68, 256 P. 561, 563, 564.

Defendants' Proposed Instruction No.

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal. However, the effect of this presumption is only to place upon the prosecution the burden of proving him guilty beyond a reasonable doubt. Reasonable doubt is defined as follows: It is not a mere possible doubt; because everything relating to human af-

fairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

CALJIC 21.

People vs. McEvers, 53 Cal.App. 2d 448, 128 P.2d 93.

People vs. Matthai, 135 Cal. 442, 67 P. 694.

People vs. Soldavini, 45 Cal.App. 2d 460, 114 P.2d 415.

Defendants' Proposed Instruction No.

The Court has endeavored to give you instructions embodying all rules of law that may become necessary in guiding you to a just and lawful verdict. The applicability of some of these instructions will depend upon the conclusions you reach as to what the facts are. As to any such instruction, the fact that it has been given must not be taken as indicating an opinion of the Court that the instruction will be necessary or as to what the facts are. If an instruction applies only to a state of facts which you find does not exist, you will disregard the instruction.

CALJIC 8.

People vs. Clark, 70 Cal.App. 531, 233 P. 980.

People vs. Casey, 79 Cal.App. 295, 249 P. 525, rehearing denied 250 P. 653.

Defendants' Proposed Instruction No.....

I instruct you that in the case involving Robert Thompson in which he was convicted of a violation of the Smith Act, he was neither charged with nor convicted of any attempt to overthrow the government of the United States, nor of conspiring to do so. Neither was he charged with nor convicted of any overt act designed to overthrow the government of the United States, or conspiring to do so. Furthermore, he was not charged with saying anything or writing anything designed or calculated to overthrow the government. The charge against him is that he conspired with others to assemble and to talk and to publish certain ideas at a later date, which ideas would constitute an advocacy of the overthrow of the government.

I tell you these things in order to make clear to you what is involving in the charges contained in the first and second counts, relating to accessories after the fact. Before any defendant in this case can be convicted, under either the first or second count, you must be satisfied beyond a reasonable doubt from all the evidence, that such defendant or defendants conducted themselves in such manner as to become actual parties to the specific offense of which Thompson was convicted.

United States vs. Dennis, opinion of Justice
Black, 339 U.S. 162, 175.

Skelly vs. United States (CCA 10), 76 F.2d
483.

Defendants' Proposed Instruction No.....

The knowledge charged in this indictment is not that the defendants had knowledge that Robert Thompson had been convicted of an offense, but that they had knowledge that he actually had committed the offense of conspiracy to violate the Smith Act. I instruct you that unless the prosecution proves that a particular defendant knew that Thompson had actually committed the offense for which he was tried, then the requirement of the statute has not been made out. In other words, it is not enough to show that a defendant had knowledge that Thompson was convicted, for this is not the same as knowledge that Thompson was guilty. It is true that when a person is convicted, an inference may be drawn that he was guilty, but this does not necessarily follow. A person may in good faith believe that another has been unjustly convicted, and that the person convicted was actually innocent of the charge on which he was tried.

If, therefore, you find from the evidence in the case of any particular defendant or defendants, that the prosecution has not satisfied you beyond a reasonable doubt that such defendant or defendants knew, not merely that Thompson had been convicted, but that he was guilty of the offense charged against him, then a case has not been made out against such defendant or defendants.

Defendants' Proposed Instruction No.....

Concealing means the taking of active steps by the defendant to hide a fugitive from the police.

Harboring means caring for him after such concealment. Mere association with a fugitive, knowledge of his whereabouts, and failing or refusing to disclose this information, is not a violation of law.

In addition, it must be the defendant, not the fugitive, who does the concealing, and the concealing must be something more than the mere failure to reveal. In other words, if you find that a fugitive committed the acts of concealment or hiding, but that a defendant did not, the offense would not be made out against such defendant.

I also instruct you that mere knowledge that a person concealed is a so-called fugitive is not in and of itself enough. Before you can convict a defendant it is necessary to establish that he had notice or knowledge that a federal warrant for the arrest of the so-called fugitive had been issued.

Defendants' Proposed Instruction No.....

“Circumstantial evidence is equally available with direct evidence to prove the conspiracy, but suspicion or conjecture cannot take the place of evidence. Guilt must be established beyond a reasonable doubt, and, where the evidence is as consistent with innocence as with guilt, no conviction can properly be had. Even participation in the offense which is the object of the conspiracy does not necessarily prove the participant guilty of conspiracy. The evidence must convince that the defendant did something other than participate in the offense which is the object of the conspiracy. There must, in addition thereto, be proof of the unlawful

agreement and participation therein, with knowledge of the agreement.

“Presumption cannot be based upon another presumption, but only upon facts. It is not necessary that all of the alleged conspirators should have been such from the beginning of the conspiracy. There may be a subsequent joining; but a person, to be held as subsequently joining a conspiracy, must be shown to have had knowledge of the conspiracy at the time of joining, and to have participated while having such knowledge.”

Dahly vs. United States (CCA 8), 50 F.2d 37, 42.

Defendants’ Proposed Instruction No.....

On the other hand, your own authority to judge the evidence and to determine the facts in the case has this limitation: it is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law stated to you.

CALJIC 7-A.

Defendants’ Proposed Instruction No.....

(Requested to be given only in the event that the Court comments upon the evidence, and then, if agreeable to the Court, this instruction to be given at the conclusion of the Court’s comment on the evidence.)

As Judge of this Court, presiding at the trial of this action, I am authorized within proper bounds to comment to the jury on the credibility of any

witness and on any other phase of the evidence.

Under that authority, and with a view to aiding you in determining the facts, I have made certain statements concerning the evidence in this case.

However, I instruct you that the jury are the sole and exclusive judges of all questions of fact and of the credibility of each and every witness, and you are not to consider any comment which I have made on the evidence as binding upon you, or necessarily to be followed by you. I caution you that it is your right and duty to exercise the same independence of judgment in weighing my comment on the evidence as you are entitled to exercise in weighing the testimony of witnesses and the arguments of counsel. As Judge of this Court, I do not intend, nor desire, that my judgment shall be substituted for the judgment of the jury. My sole purpose in commenting on the evidence has been to express my personal thought on these matters for the sole purpose of assisting you in arriving at a verdict, but I particularly caution you that any such thought expressed by me shall not be used for the purpose of imposing my will upon you, or for the purpose of compelling a verdict. Your verdict should reflect your own sound judgment, and not that of the Court or myself as Judge thereof.

Accordingly, in the exercise of your own sound judgment, you are at liberty to disagree with any comment I have made upon the evidence, and to disregard such comment if you so see fit.

CALJIC 7, as modified.

People vs. Gosden, 6 Cal. 2d 14, 32.

Defendants' Proposed Instruction No.

At times throughout the trial the Court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them. Whether offered in evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness. As to any offer of evidence that has been rejected by the Court, you, of course, must not consider the same; as to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

CALJIC 6.

Defendants' Proposed Instruction No.

If in these instructions any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole, and are to regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

CALJIC 5.

Defendants' Proposed Instruction No.....

You are the exclusive judges of the facts and of the effect and value of the evidence, but you must determine the facts from the evidence produced here in court. If any evidence was admitted and afterwards was ordered by me to be stricken out, you must disregard entirely the matter thus stricken, and if any counsel intimated by any of his questions that certain hinted facts were, or were not, true, you must disregard any such intimation, and must not draw any inference from it. As to any statement made by counsel in your presence concerning the facts in the case, you must not regard such a statement as evidence; provided, however, that if counsel for all parties have stipulated to any fact, you are to regard that fact as being conclusively proved; and if, in the trial, any party has admitted a fact to be true, such admission may be considered by you as evidence in the case.

CALJIC 2.

Defendants' Proposed Instruction No.....

Each defendant in this case is individually entitled to, and must receive, your determination whether or not he was a member of the alleged conspiracy, if any existed, and as to each defendant you must determine whether or not he was a conspirator, as alleged, by deciding whether or not he wilfully, intentionally and knowingly joined with any other or others in an agreement or understanding having the elements of a criminal conspiracy as I have stated them to you.

CALJIC 944.

Defendants' Proposed Instruction No.....

No act or declaration of a conspirator that is a fresh and independent product of his own mind and is outside the common design and not in furtherance of that design, is binding upon his co-conspirators, and they are not criminally liable for any such act or declaration.

CALJIC 943.

People vs. Werner, 16 Cal.2d 216, 105 P.2d 927.

People vs. Creeks, 170 Cal. 368, 149 P. 821.

People vs. Kauffman, 152 Cal. 331, 92 P. 861.

People vs. Smith, 151 Cal. 619, 91 P. 511.

People vs. Suter, 43 Cal.App. 2d 444, 111 P.2d 23.

People vs. Little, 41 Cal.App. 2d 797, 107 P.2d 634, 108 P.2d 63.

People vs. DiDonato, 90 Cal.App. 366, 265 P. 978.

Defendants' Proposed Instruction No.....

Evidence that a defendant was in the company of or associated with one or more other persons alleged or proved to have been members of a criminal conspiracy is not, in itself, sufficient to prove that such defendant was a member of the alleged conspiracy.

CALJIC 937-A.

Defendants' Proposed Instruction No.....

Neither the members of a conspiracy, if one existed, nor the persons charged with having belonged

to a conspiracy are bound by or liable for any act or declaration of a person who was not a member of the conspiracy, although the latter person may have performed an act or acts which tended to promote the object of the alleged conspiracy. Evidence of an act which furthered the execution of the design of an alleged conspiracy is not, in itself, sufficient to prove that the person committing the act was a member of such a conspiracy. Neither is evidence that such person or any person was in the company of or associated with one or more alleged conspirators, in itself, sufficient to prove that he was a member of the alleged conspiracy.

CALJIC 937.

People vs. Armentrout, 118 Cal.App.Supp. 761, 1 P.2d 556.

People vs. Yant, 26 Cal.App. 2d 725, 80 P.2d 506.

People vs. Weber, 7 Cal.App. 2d 620, 46 P.2d 222.

Defendants' Proposed Instruction No.

Where a conspirator commits an act which is neither in furtherance of the object of the conspiracy nor the natural and probable consequence of an attempt to attain that object, he alone is responsible for and is bound by that act, and no responsibility therefor attaches to any of his confederates.

CALJIC 936.

People vs. Little, 41 Cal.App. 2d 797, 107 P.2d 634, 108 P.2d 63.

People vs. Gilliland, 39 Cal.App. 2d 250, 103 P.2d 179.

Defendants' Proposed Instruction No.....

No evidence of an act or declaration of an alleged conspirator shall be binding upon or considered against any other alleged conspirator unless and until, independent and without the aid of such evidence, a conspiracy as alleged, and of which both such persons were members, has been proved to have been in existence at the time of such act or declaration; and no alleged conspirator shall be held criminally responsible as such for any act of another alleged conspirator when the only substantial evidence purporting to indicate an agreement between them is evidence of the acts and declarations of the latter.

CALJIC 935.

People vs. Marvin, 48 Cal.App. 2d 180, 119 P.2d 413.

People vs. MacPhee, 26 Cal.App. 218, 146 P. 522.

Defendants' Proposed Instruction No.....

You are hereby instructed that with respect to the crime of conspiring to harbor and conceal Sidney Steinberg as charged in the fourth count of the indictment herein, a necessary element is the existence in the minds of the defendants of the specific intent to prevent the discovery and arrest of Sidney Steinberg, and unless such intent so exists, that crime is not committed.

Adopted from CALJIC 72-C.

Defendants' Proposed Instruction No.....

You are hereby instructed that with respect to the harboring and concealing crime charged in the third count of the indictment, a necessary element is the existence in the minds of the defendants of the specific intent to prevent the discovery and arrest of Sidney Steinberg, and unless such intent so exists that crime is not committed.

Adopted from CALJIC 72-C.

Defendants' Proposed Instruction No.....

In the crime charged in the second count of the indictment herein alleging a conspiracy on the part of the defendants to violate Section 3 of Title 18 of the United States Code, by receiving, relieving, comforting and assisting Robert G. Thompson, a necessary element is the existence in the minds of the defendants of the specific intent to hinder and prevent the apprehension and punishment of Robert G. Thompson, and unless such intent so exists that crime is not committed.

Adopted from CALJIC 72-C.

Defendants' Proposed Instruction No.....

The attitude and conduct of jurors at the outset of their deliberations are a matter of considerable importance. It is rarely productive of good for a juror, upon entering the jury room, to make an emphatic expression of his opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his sense of pride may be aroused, and he may hesitate to

People vs. Gilliland, 39 Cal.App. 2d 250, 103 P.2d 179.

Defendants' Proposed Instruction No.....

No evidence of an act or declaration of an alleged conspirator shall be binding upon or considered against any other alleged conspirator unless and until, independent and without the aid of such evidence, a conspiracy as alleged, and of which both such persons were members, has been proved to have been in existence at the time of such act or declaration; and no alleged conspirator shall be held criminally responsible as such for any act of another alleged conspirator when the only substantial evidence purporting to indicate an agreement between them is evidence of the acts and declarations of the latter.

CALJIC 935.

People vs. Marvin, 48 Cal.App. 2d 180, 119 P.2d 413.

People vs. MacPhee, 26 Cal.App. 218, 146 P. 522.

Defendants' Proposed Instruction No.....

You are hereby instructed that with respect to the crime of conspiring to harbor and conceal Sidney Steinberg as charged in the fourth count of the indictment herein, a necessary element is the existence in the minds of the defendants of the specific intent to prevent the discovery and arrest of Sidney Steinberg, and unless such intent so exists, that crime is not committed.

Adopted from CALJIC 72-C.

Defendants' Proposed Instruction No.....

You are hereby instructed that with respect to the harboring and concealing crime charged in the third count of the indictment, a necessary element is the existence in the minds of the defendants of the specific intent to prevent the discovery and arrest of Sidney Steinberg, and unless such intent so exists that crime is not committed.

Adopted from CALJIC 72-C.

Defendants' Proposed Instruction No.....

In the crime charged in the second count of the indictment herein alleging a conspiracy on the part of the defendants to violate Section 3 of Title 18 of the United States Code, by receiving, relieving, comforting and assisting Robert G. Thompson, a necessary element is the existence in the minds of the defendants of the specific intent to hinder and prevent the apprehension and punishment of Robert G. Thompson, and unless such intent so exists that crime is not committed.

Adopted from CALJIC 72-C.

Defendants' Proposed Instruction No.....

The attitude and conduct of jurors at the outset of their deliberations are a matter of considerable importance. It is rarely productive of good for a juror, upon entering the jury room, to make an emphatic expression of his opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his sense of pride may be aroused, and he may hesitate to

recede from an announced position if shown that it is fallacious. Remember that you are not partisans or advocates, but rather judges. The final test of the quality of your service will lie in the verdict which you return to the court, not in the opinions any of you may hold as you retire. Have in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict in this case. To that end, the Court reminds you that in your deliberations in the jury room there can be no triumph excepting the ascertainment and declaration of the truth.

CALJIC 4.

People vs. Selby, 198 Cal. 426, 439, 245 P. 426, 432.

Defendants' Proposed Instruction No.....

The prosecution and the defendants all are entitled to the individual opinion of each juror. It is the duty of each of you, after considering all the evidence in the case, to determine, if possible, the question of the guilt or innocence of each of the defendants. When you have reached a conclusion in that respect, you should not change it merely because one or more or all of your fellow jurors may have come to a different conclusion. However, each juror should freely and fairly discuss with his fellow jurors the evidence and the deductions to be drawn therefrom. If, after doing so, any juror should be satisfied that a conclusion first reached by him was wrong, he unhesitatingly should abandon

that original opinion and render his verdict according to his final decision.

CALJIC 3.

Defendants' Proposed Instruction No.....

I instruct you that the offense of harboring and concealing a fugitive from justice is a lesser offense than, and included within, the offense of being an accessory after the fact. If, therefore, you find from all the evidence that the defendants or any of them engaged in conduct amounting to the harboring and concealing of Robert Thompson, for the purpose of preventing his apprehension or arrest, and at the same time if you also find that such defendants or any of them did not engage in activity making them accessories after the fact of the offense for which Thompson was tried and convicted in New York, then you should find such defendants, if any, guilty of harboring and concealing Thompson, and you should return a verdict of not guilty as to any such defendants in regard to the charge of being an accessory after the fact.

I further charge you that conspiracy to commit the substantive offense of harboring and concealing is likewise included within, and constitutes a lesser offense than, the charge of conspiracy to commit the substantive crime of accessory after the fact. Therefore, if you find from the evidence that the defendants or any of them engaged in conduct amounting to conspiracy to harbor and conceal Thompson, but not amounting to conspiracy to be and become accessories after the fact, you are at liberty to find

such defendants, if any, guilty of conspiracy to harbor and conceal Thompson, but you should return a verdict of not guilty as to any such defendants in regard to the charge of conspiracy to be and become accessories after the fact.

[Endorsed]: Filed April 26, 1954.

[Title of District Court and Cause.]

VERDICT

We, the Jury, find Shirley Kremen, also known as Lee Kaplan, the defendant at the bar,

Guilty as to Count One.

Guilty as to Count Two.

Guilty as to Count Three.

Guilty as to Count Four.

/s/ EUGENE E. MARSHALL,
Foreman

[Endorsed]: Filed April 26, 1954.

[Title of District Court and Cause.]

VERDICT

We, the Jury, find Carl Ross, also known as Carl Edwin Rasi, and Robert Edward Newman, the defendant at the bar,

Guilty as to Count One.

Guilty as to Court Two.

Guilty as to Count Three.

Guilty as to Count Four.

/s/ EUGENE E. MARSHALL,
Foreman

[Endorsed]: Filed April 26, 1954.

[Title of District Court and Cause.]

VERDICT

We, the Jury, find Samuel Irving Coleman, also known as William B. Gordon, the defendant at the bar,

Guilty as to Count One.

Guilty as to Count Two.

Guilty as to Count Three.

Guilty as to Count Four.

/s/ EUGENE E. MARSHALL,
Foreman

[Endorsed]: Filed April 26, 1954.

[Title of District Court and Cause.]

VERDICT

We, the Jury, find Sidney Steinberg, also known as Sid Stein, and Joshua Newberg, the defendant at the bar,

Guilty as to Count One.

Guilty as to Count Two.

/s/ EUGENE E. MARSHALL,
Foreman

[Endorsed]: Filed April 26, 1954.

In the United States District Court for the Northern District of California, Southern Division

No. 33740

UNITED STATES OF AMERICA,

vs.

SHIRLEY KREMEN, also known as LEE
KAPLAN

JUDGMENT AND COMMITMENT

On this 3rd day of May, 1954 came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon her plea of Not Guilty and a Verdict of Guilty of the offense of following violations:

Count 1. Viol. 18 USC 3—Accessory after the fact.

Count 2: Viol. 18 USC 371—Conspiracy to viol. Sec. 3, 18 USC.

Count 3: Viol. 18 USC 1071—Harboring.

Count 4: Viol. 18 USC 371—Conspiracy to viol. Sec. 1071, 18 USC.

(Defts. named in indt. did receive and assist Robert G. Thompson in order to hinder and prevent his apprehension and punishment; defts. knew he had been convicted in U. S. Dist. Ct., S.D.N.Y. for viol. §§ 2, 3, 5 of Act of June 28, 1940—Smith Act. Said defts. did harbor Sid Stein, alias Sidney Steinberg; defts. had notice and knowledge that warrant for his arrest had been issued in U. S. Dist. Ct., S.D.N.Y. Said defts. unlawfully did conspire with

each other, with Robert G. Thompson, a co-conspirator, and with divers other persons unknown. In pursuance of the conspiracy and to effect object thereof in the Nor. Dist. of Calif. and elsewhere one or more of defts. herein did further said conspiracy by committing certain overt acts, etc. Offenses committed on or about Aug. 27, 1953, in vicinity of Twain Harte, Tuolumne Co., Calif.), as charged said Cts. 1, 2, 3, 4 of indictment; and the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of—

Count One—One (1) Year.

Count Two—One (1) Year.

Ordered that said terms of imprisonment imposed on Counts One and Two commence and run Concurrently.

Count Three—Six (6) Months.

Count Four—Six (6) Months.

Ordered that said terms of imprisonment imposed on Counts Three and Four commence and run Concurrently with one another, and commence and run Concurrently with term of imprisonment imposed on Count One.

Total Imprisonment—One (1) Year.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ LOUIS E. GOODMAN,
United States District Judge

The Court recommends commitment to an institution to be designated by U. S. Attorney General.

[Endorsed]: Judgment and Commitment filed this 5th day of May, 1954.

In the United States District Court for the Northern District of California, Southern Division

No. 33740

UNITED STATES OF AMERICA

vs.

CARL ROSS, alias CARL EDWIN RASI, alias
ROBERT EDWARD NEWMAN

JUDGMENT AND COMMITMENT

On this third day of May, 1954 came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of Not Guilty and a Verdict of Guilty of the offense of following violations:

Count 1: Viol. 18 USC 3—Accessory after the fact.

Count 2: Viol. 18 USC 371—Conspiracy to viol. Sec. 3, 18 USC.

Count 3: Viol. 18 USC 1071—Harboring.

Count 4: Viol. 18 USC 371—Conspiracy to viol. Sec. 1071, 18 USC.

(Defts. named in indictment did receive and assist Robert G. Thompson in order to hinder and prevent his apprehension and punishment; defts. knew he had been convicted in U. S. Dist. Ct., S.D.N.Y. for viol. §§ 2, 3, 5 of Act of June 28, 1940—Smith Act. Said defts. did harbor Sid Stein, alias Sidney Steinberg; defts. had notice and knowledge that warrant for his arrest had been issued in U. S. Dist. Ct., S.D.N.Y. Said defts. unlawfully did conspire with each other, with Robert G. Thompson, a co-conspirator, and with divers other persons unknown. In pursuance of the conspiracy and to effect object thereof in the Nor. Dist. of Calif. and elsewhere, one or more of defts. herein did further said conspiracy by committing certain overt acts, etc. Offenses committed on or about August 27, 1953 in vicinity of Twain Harte, Tuolumne Co., Calif.), as charged said Cts. 1, 2, 3, 4 of indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or

his authorized representative for imprisonment for a period of—

Count One—One (1) Year.

Count Two—One (1) Year.

Ordered that said terms of imprisonment imposed on Counts One and Two commence and run Concurrently.

Count Three—Six (6) Months.

Ordered that said term of imprisonment imposed on Count Three commence and run from and after the Expiration of term of imprisonment imposed on Counts One and Two.

Count Four—Six (6) Months.

Ordered that said term of imprisonment imposed on Count Four commence and run from and after the Expiration of term of imprisonment imposed on Count Three.

Total Imprisonment—Two (2) Years.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ LOUIS E. GOODMAN,
United States District Judge

The Court recommends commitment to an institution to be designated by U. S. Attorney General.

[Endorsed]: Judgment and Commitment filed this 5th day of May, 1954.

In the United States District Court for the Northern District of California, Southern Division

No. 33740

UNITED STATES OF AMERICA

vs.

SAMUEL IRVING COLEMAN, also known as
WILLIAM B. GORDON

JUDGMENT AND COMMITMENT

On this 3rd day of May, 1954 came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of Not Guilty and a Verdict of Guilty of the offense of following violations:

Count 1: Viol. 18 USC 3—Accessory after the fact.

Count 2: Viol. 18 USC 371—Conspiracy to viol. Sec. 3, 18 USC.

Count 3: Viol. 18 USC 1071—Harboring.

Count 4: Viol. 18 USC 371—Conspiracy to viol. Sec. 1071, 18 USC.

(Defts. named in indt. did receive and assist Robert G. Thompson in order to hinder and prevent his apprehension and punishment; defts. knew he had been convicted in U. S. Dist. Ct., S.D.N.Y. for viol. §§ 2, 3, 5 of Act of June 28, 1940—Smith Act. Said defts. did harbor Sid Stein, alias Sidney Steinberg; defts. had notice and knowledge that warrant for his arrest had been issued in U. S. Dist. Ct., S.D.N.Y. Said defts. unlawfully did conspire with

each other, with Robert G. Thompson, a co-conspirator, and with divers other persons unknown. In pursuance of the conspiracy and to effect object thereof in the Nor. Dist. of Calif. and elsewhere, one or more of defts. herein did further said conspiracy by committing certain overt acts, etc. Offenses committed on or about August 27, 1953, in vicinity of Twain Harte, Tuolumne County, Calif.), as charged said Cts. 1, 2, 3, 4 of indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of—

Count One—One (1) Year.

Count Two—One (1) Year.

Ordered that said term of imprisonment imposed on Count Two commence and run from and after Expiration of term of imprisonment imposed on Count One.

Count Three—Six (6) Months.

Ordered that said term of imprisonment imposed on Count Three commence and run from and after Expiration of term of imprisonment imposed on Count Two.

Count Four—Six (6) Months.

Ordered that said term of imprisonment imposed

on Count Four commence and run from and after Expiration of term of imprisonment imposed on Count Three.

Total Imprisonment—Three (3) Years.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ LOUIS E. GOODMAN,
United States District Judge

The Court recommends commitment to an institution to be designated by U. S. Attorney General.

[Endorsed]: Judgment and Commitment filed this 5th day of May, 1954.

In the United States District Court for the Northern District of California, Southern Division

No. 33740

UNITED STATES OF AMERICA

vs.

SIDNEY STEINBERG, alias SID STEIN and
JOSHUA NEWBERG

JUDGMENT AND COMMITMENT

On this 3rd day of May, 1954 came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been con-

victed upon his plea of Not Guilty and a Verdict of Guilty of the offense of following violations:

Count 1: Viol. 18 USC 3—Accessory after the fact. On or about Aug. 27, 1953 in Nor. Dist. of Calif., in vicinity of Twain Harte, Calif., defts. Sidney Steinberg, et al., did receive, relieve, comfort and assist Robert G. Thompson in order to hinder and prevent his apprehension and punishment. Defts. knew he had been convicted in U. S. Dist. Ct., S.D.N.Y. for viol. Secs. 2, 3, 5 of Act of June 28, 1940, Smith Act.

Count 2: Viol. 18 USC 371—Conspiracy to viol. Sec. 3, Title 18 USC. At a time and place unknown, in Nor. Dist. of Calif. and elsewhere, defts. Sidney Steinberg, et al., unlawfully conspired with each other and with divers other persons unknown. Object of said conspiracy was to receive, etc., said Robert G. Thompson as aforesaid. Defts. well knew he had violated Secs. 2, 3, 5 of Act of June 28, 1940, Smith Act. In pursuance of said conspiracy and to effect object thereof, deft. Sidney Steinberg, while using name of Joshua Newberg, committed certain overt acts on or about Aug. 1, 1953 and certain other dates, in vicinity of Twain Harte, Calif., as charged said Counts 1 and 2 of indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of—

Count One—Two (2) Years.

Count Two—One (1) Year.

Ordered that said term of imprisonment imposed on Count Two of indictment commence and run from and after the expiration of imprisonment imposed on Count One.

Total Imprisonment—Three (3) Years.

(Indictment contains four counts. Defendant not named in Counts 3 and 4.)

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ LOUIS E. GOODMAN,
United States District Judge

The Court recommends commitment to an institution to be designated by U. S. Attorney General.

[Endorsed]: Judgment and Commitment filed this 5th day of May, 1954.

[Title of District Court and Cause.]

EXCERPTS FROM DOCKET ENTRIES

1953

Nov. 10—Deft. pleaded not guilty, ord. contd. to Nov. 27 hrg. mos. to be set. as to deft. Sidney Steinberg. Defts. Coleman, Blau, Ross, Kremen, pleaded not guilty, Ord. contd. to Nov. 27 for Hrg. on Mos. and to be set.

Nov. 27—Motions to Dism. and for B/Ps, Denied; motions for discovery and inspection and for subpoena, Denied, without prejudice; Fur. Ord. case contd. to Dec. 11th to be set. (Applicable to all 5 defts. in this case.)

1954

Feb. 8—Mr. Schnacke made a motion to strike the defts. motion for return of seized property; evid. was introd. on behalf of the deft. After hrg. Mr. Gladstein the motion was ordered submitted and contd. to Feb. 9, 1954 at 10:00 a.m. for ruling on Motions to dismiss and motion for production of list of seized articles. (Heard by Judge Murphy.)

Feb. 9—Deft's motion for return of seized property is denied, and the government's motion is Granted; Fur. Ord. that the Defts may upon demand have a summarized list of seized property. 48 Filed Order denying deft. Sidney Steinberg, Kremen, Ross and Coleman's motion for return of seized property.

1954

Apr. 5—Hrg. on Mo. to return seized property. Ord. cont'd to Apr. 6 for further hrg. (Goodman.)

Apr. 6—By Stip. of counsel Ord. Mos. off Cal.

Apr. 12—Ordered case assigned to Judge Goodman, for trial. Trial Begun, jury impaneled (with Alternate Jurors). Motion for a mis-trial and for judgment of acquittal Denied. Motion on ground of surprise, for fair adjournment to prepare further defense, Denied. Motion by Mr. Gladstein and Mr. Leonard to withdraw as counsel for Steinberg, Granted. Defendant, Steinberg to appear on his own behalf. Motion by Mr. Gladstein that defendant, Julia Blau, be furnished reporter's daily transcript at Government's expense, taken under submission. Evid. introduced and case contd. to April 13, 1954 at 10:30 a.m. for further trial.

Apr. 13—Further Hrg. on motions to suppress evid. and to return seized property. After argument, ea. of said mos. was ord. Denied. Trial resumed, Mo. of deft., Blau, for copy of reporter's daily transcript at Government expense, heretofore submitted, ordered Denied. Cont'd to Apr. 14, 1954 for fur. trial.

Apr. 14—Trial resumed, Evid. introd. ord. contd. to Apr. 15 for fur. trial.

1954

Apr. 15—Trial resumed, evid. introd. Motion by Norman Leonard for a mis-trial was Denied, Ord. contd. to Apr. 16th for fur. trial.

Apr. 16—Trial resumed, evid. introd., ord. contd. to Apr. 19th for trial.

Apr. 19—Trial resumed, evid. introd. Motion made by Norman Leonard, Esq., for a mis-trial, was denied, Motion made by Mr. Gladstein, Esq., for striking the testimony of Henry Capozzi was Granted. Ord. this case contd. to Apr. 20th for further trial.

Apr. 20—Trial resumed, Motions by defense counsel to strike the testimony of Philip J. Moody, Andrew M. Price, and part of the testimony of Harry L. Sotzen were denied: Motions to strike the testimony of Robert Darden and Robert Munger were granted; a motion by Norman Leonard for a mis-trial was denied, case contd. to April 21st for fur. trial.

Apr. 21—Trial resumed, Mo. to strike testimony of witness Mike Lackey was denied. Plaintiff rests subject to hrg. on pltf's Mo. that all the testimony and exhibits heretofore admitted as to certain defts be admitted to all defts. Contd. to Apr. 22nd for hrg. of Mos. in absence of the Jury, jury excused until Apr. 23rd at 10 a.m.

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Apr. 22—Trial resumed, Motion by plaintiff to re-open case for purpose of introducing certain exhibits, granted. Motion by defts. to strike the testimony of certain witnesses granted in part and denied in part. Mo. by defts. for mis-trial denied. Motion by defts. to strike certain exhibits granted in part and denied in part. Motion for judgment of acquittal denied as to all defendants except deft. Blau. Motion for judgment of acquittal granted as to deft. Blau and her bond exonerated. The motion, heretofore made, that the testimony of certain witnesses be admitted as to all defts. was granted as to all defts., except deft. Blau. The defts. offered no evidence and rested.

Apr. 23—Trial resumed, evid. introd., Ord. contd. to Apr. 26th for fur. trial.

Apr. 26—Trial resumed. Jury retired for deliberation at 12:07 p.m., returned at 9:47 p.m. with the following verdict: Defts. Shirley Kremen, Carl Ross, and Samuel Irving Coleman were found Guilty with respect to counts one, two, three and four. The deft. Sidney Steinberg was found Guilty with respect to counts one and two. Ordered all the defendants remanded to the custody of the Marshal and this case contd. to May 3rd for hearing a motion for a new trial and for judgment.

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May 3—Richard Gladstein, Esq., made a motion for judgment of Acquittal, for a new trial and in Arrest of Judgment on behalf of all the defendants, each of said motions were denied. A request that ea. deft. be permitted to address the court before sentence was granted.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Shirley Kremen, 546 North Sierra Bonita, Los Angeles, California.

Name and address of appellant's attorney: Gladstein, Andersen & Leonard, 240 Montgomery Street, San Francisco 4, California.

Offense: Count I—Violation of 18 USCA § 3. Count II—Conspiracy to violate 18 USCA § 3. Count III—Violation of 18 USCA § 1071. Count IV—Conspiracy to violate 18 USCA § 1071.

Concise statement of judgment or order, giving date, and any sentence: May 3, 1954—Imprisonment for 1 year on Count I; for 1 year on Count II; for 6 months on Count III; for 6 months on Count IV. All sentences to run concurrently.

Name of Institution where now confined, if not on bail: San Francisco County Jail.

I, the above-named appellant, hereby appeal to

the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated: May 3, 1954.

GLADSTEIN, ANDERSEN &
LEONARD,
/s/ By NORMAN LEONARD,
Attorneys for Defendants

[Endorsed]: Filed May 3, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Carl Ross, 1126 Plymouth Avenue North, Minneapolis, Minnesota.

Name and address of appellant's attorneys: Gladstein, Andersen & Leonard, 240 Montgomery Street, San Francisco 4, California.

Offense: Count I—Violation of 18 USCA §3.
Count II—Conspiracy to violate 18 USCA §3.
Count III—Violation of 18 USCA §1071. Count IV
—Conspiracy to violate 18 USCA §1071.

Concise statement of judgment or order, giving date, and any sentence: May 3, 1954—Imprisonment for 1 year on Count I; for 1 year on Count II; for 6 months on Count III; for 6 months on Count IV. Sentences on Counts I and II to run concurrently; sentences on Counts III and IV to run consecutively with each other and consecutively with the sentences imposed on Count I.

Name of Institution where now confined: San Francisco County Jail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above stated judgment.

May 3, 1954.

GLADSTEIN, ANDERSEN &
LEONARD,

/s/ By NORMAN LEONARD,
Attorneys for Defendants.

[Endorsed]: Filed May 3, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Samuel Irving Coleman, 249 E. Broadway, New York, New York.

Name and address of appellant's attorneys: Gladstein, Andersen & Leonard, 240 Montgomery Street, San Francisco 4, California.

Offense: Count I—Violation of 18 USCA §3. Count II—Conspiracy to violate 18 USCA §3. Count III—Violation of 18 USCA §1071. Count IV—Conspiracy to violate 18 USCA §1071.

Concise statement of judgment or order, giving date, and any sentence: May 3, 1954—Imprisonment for 1 year on Count I; for 1 year on Count II; for 6 months on Count III; for 6 months on Count IV. All sentences to run consecutively.

Name of Institution where now confined: San Francisco County Jail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated: May 3, 1954.

GLADSTEIN, ANDERSEN &
LEONARD,

/s/ By NORMAN LEONARD,
Attorneys for Defendants.

[Endorsed]: Filed May 3, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Sidney Steinberg, 1161 Shakespeare Avenue, Bronx, New York.

Name and address of appellant's attorneys: Gladstein, Andersen & Leonard, 240 Montgomery Street, San Francisco 4, California.

Offense: Count I—Violation of 18 USCA §3.
Count II—Conspiracy to violate 18 USCA §3.

Concise statement of judgment or order, giving date, and any sentence: May 3, 1954—Imprisonment for 2 years on Count I; for 1 year on Count II. Sentences to run consecutively.

Name of Institution where now confined: San Francisco County Jail.

I, the above-named appellant, hereby appeal to

the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated: May 3, 1954.

GLADSTEIN, ANDERSEN &
LEONARD,

/s/ By NORMAN LEONARD,
Attorneys for Defendants.

[Endorsed]: Filed May 3, 1954.

[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL

Come now the defendants above-named and pursuant to the rules in such cases made and provided hereby state the points upon which they intend to rely in connection with the appeal in the above-entitled cause.

I.

The indictment and each count thereof do not state facts sufficient to constitute an offense against the United States.

II.

The evidence against the defendants and each of them was obtained as a result of an unlawful search and seizure and the trial court erred in denying defendants' motions to suppress it.

III.

The evidence is insufficient to support the ver-

dicts or any of them against the defendants or any of them on any of the counts of the indictment.

IV.

The trial court erred in denying defendants' motions for judgment of acquittal.

V.

The trial court erred in refusing to charge the jury as requested by the defendants.

VI.

The trial court erred in charging the jury as it did.

VII.

The trial court erred in denying defendants' motions for a mistrial.

Dated: May 6, 1954.

GLADSTEIN, ANDERSEN &
LEONARD,

/s/ By NORMAN LEONARD,
Attorneys for Defendants.

Acknowledgment of Service attached.

[Endorsed]: Filed May 6, 1954.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

You are hereby notified that the defendants above-named hereby designate the following as their record on appeal in the above-entitled cause:

1. The indictment.
2. The motions to dismiss, for a bill of particulars, for the issuance of a pretrial subpoena, and for discovery and inspection, filed on or about October 22, 1953.
3. The orders of the trial court denying the motions to dismiss, for a bill of particulars, for the issuance of a pretrial subpoena, and for discovery and inspection, entered on or about November 27, 1953.
4. The pleas.
5. The motion for the return of seized property filed on or about February 4, 1954.
6. The order and memorandum opinion denying the motion for the return of seized property and granting the government's motion to dismiss said motion, entered on or about February 8, 1954.
7. The motions for return of seized property and its suppression as evidence as to defendants Kremen and Blau, filed on or about March 26, 1954.
8. The affidavits submitted in support of the foregoing motions, filed on or about March 26, 1954.
9. The order denying the motions for return of seized property and its suppression as evidence as

to defendants Kremen and Blau, entered on or about April 13, 1954.

10. All of the instructions submitted by the defendants.

11. All of the instructions given by the trial court.

12. The stenographic record of the motion for judgment of acquittal made in open court on April 22, 1954, at the conclusion of the government's case; unless it will also appear in the reporter's transcript designated as Item 25 below.

13. The stenographic record or the minute order containing the ruling upon the aforesaid motion; unless it will also appear in the reporter's transcript designated as Item 25 below.

14. The stenographic record of the motion for a judgment of acquittal made in open court on April 22, 1954, at the conclusion of all of the evidence; unless it will also appear in the reporter's transcript designated as Item 25 below.

15. The stenographic record or the minute order containing the ruling upon the aforesaid motion; unless it will also appear in the reporter's transcript designated as Item 25 below.

16. The verdicts.

17. The stenographic record of the motions for judgment of acquittal, new trial, and arrest of judgment made in open court on May 3, 1954; unless it will also appear in the reporter's transcript designated as Item 25 below.

18. The stenographic record or the minute order containing the rulings upon the aforesaid motions;

unless it will also appear in the reporter's transcript designated as Item 25 below.

19. The judgment and sentence against each of the defendants.

20. The notices of appeal.

21. The entire reporter's transcript of the proceedings dealing with motions to suppress, which proceedings occurred on or about February 8, 1954, April 5, 1954, and April 13, 1954.

22. All of the exhibits received in evidence.

23. The stenographic record of the motions for mistrial made on April 12, 15, 19, and 20, 1954; unless it will also appear in the reporter's transcript designated as Item 25 below.

24. The stenographic record or minute order containing the ruling upon the aforesaid motions; unless it will also appear in the reporter's transcript designated as Item 25 below.

25. The entire reporter's transcript of the trial proceedings commencing on April 12, 1954, and terminating on May 3, 1954.

26. The statement of points to be relied upon on appeal dated May 6, 1954.

27. This designation of record on appeal.

Dated: May 6, 1954.

GLADSTEIN, ANDERSEN &
LEONARD,

/s/ By NORMAN LEONARD,
Attorneys for Defendants.

Acknowledgment of Service attached.

[Endorsed]: Filed May 6, 1954.

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO DOCKET RECORD ON APPEAL

Upon reading the affidavit of Norman Leonard,
and good cause appearing therefor,

It Is Hereby Ordered that the time within which
defendants may docket the record on appeal in the
above-entitled matter may be, and it is hereby, ex-
tended to and including the 14th day of July, 1954.

Dated June 11, 1954.

/s/ LOUIS E. GOODMAN,
U. S. District Judge.

[Endorsed]: Filed June 11, 1954.

[Title of District Court and Cause.]

AFFIDAVIT OF NORMAN LEONARD IN
SUPPORT OF APPLICATION FOR ORDER
FOR EXTENSION OF TIME WITHIN
WHICH TO DOCKET RECORD ON APPEAL

State of California,
City and County of San Francisco—ss.

Norman Leonard, being first duly sworn, deposes
and says: That he is one of the attorneys for de-
fendants above-named. That the time within which
the record on appeal in the above-entitled matter
may be docketed expires on June 14, 1954. That
your affiant has been informed by the official court

reporter that certain portions of the transcript of testimony taken in the above-entitled matter have not yet been transcribed because of the fact that the press of business has prevented the reporter from completing the task. The reporter informs your affiant that he expects the entire record will have been transcribed within a period of thirty days from June 14, 1954.

Wherefore, your affiant prays for an order extending the time within which to docket the record on appeal in the above-entitled matter to and including the 14th day of July, 1954.

/s/ NORMAN LEONARD

Subscribed and sworn to before me this 9th day of June, 1954.

[Seal] PEARL STOCKWELL,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed June 11, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court, or true copies thereof, in the above-entitled case, and that they

constitute the record on appeal herein as designated by the attorneys for the appellants:

Indictment.

Motion to dismiss.

Motion for discovery and inspection.

Motion for bill of particulars.

Motion for the issuance of a pretrial subpoena.

Notice of motion for the return of seized property.

Notice of motion for the return of seized property and its suppression as evidence.

Notice of motion for the return of seized property and its suppression as evidence.

Affidavit for the return of seized property.

Order.

Defendants' proposed instructions.

Verdict as to Shirley Kremen.

Verdict as to Carl Ross.

Verdict as to Samuel Irving Coleman.

Verdict as to Sidney Steinberg.

Judgment and commitment as to Shirley Kremen.

Judgment and commitment as to Carl Ross.

Judgment and commitment as to Samuel Irving Coleman.

Judgment and commitment as to Sidney Steinberg.

Excerpts from docket entries.

Notice of appeal of Shirley Kremen.

Notice of appeal of Carl Ross.

Notice of appeal of Samuel Irving Coleman.

Notice of appeal of Sidney Steinberg.

Statement of points to be relied upon on appeal.

Designation of record on appeal.

Order extending time within which to docket record on appeal.

Affidavit of Norman Leonard in support of application for order for extension of time within which to docket record on appeal.

Thirteen volumes of Reporter's transcript.

Plaintiff's Exhibits 1 to 25, inclusive.

Plaintiff's Exhibits 29 to 30, inclusive.

Plaintiff's Exhibit 78 to 81, inclusive.

Plaintiff's Exhibits 83 to 86, inclusive.

Plaintiff's Exhibit 88.

Plaintiff's Exhibits 90 to 111, inclusive.

Plaintiff's Exhibits 113 to 115, inclusive.

Plaintiff's Exhibits 120 to 122, inclusive.

Defendants' Exhibits A to A-14, inclusive.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 14th day of July, 1954.

[Seal]

C. W. CALBREATH,

Clerk.

/s/ By WM. C. ROBB,

Deputy.

[Title of District Court and Cause.]

MOTION TO SUPPRESS EVIDENCE — MOTION TO RETURN SEIZED PROPERTY

Monday, April 5, 1954

Appearances: For Plaintiff: United States Attorney, by Robert H. Schnacke. For Defendants: Gladstein, Andersen & Leonard, by Richard Gladstein.

The Clerk: The United States versus Shirley Kremen, et al; motion to suppress evidence, motion to return seized property.

(Opening statements made on behalf of the respective parties.)

WILLIAM H. WHELAN

a witness called on behalf of the defendants being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as hereinafter indicated:

The Clerk: Q. Will you please state your name to the Court. A. William H. Whelan.

Direct Examination

Mr. Gladstein: Q. Mr. Whelan, you are with the Federal Bureau of Investigation, are you not?

A. Yes, sir.

Q. And directing your attention to the month of August of last year, you were so engaged and employed at that time as well, were you not?

(Testimony of William H. Whelan.)

A. Yes, sir.

Q. Now, on a date in August, the 27th of August, 1953, did you participate in the making of certain arrests of some of the defendants in this case at a house—property at Twain Harte, California?

A. Yes, sir.

Q. Who was the agent in charge?

A. I was, sir.

Q. And do you recall what time of the day approximately this arrest was made?

A. It was about five minutes after one in the afternoon.

Q. In the afternoon. And who besides yourself participated in the making of the arrests?

A. Several agents. In other words, under my supervision at that time.

Q. How many?

A. Totaling in numbers, as I recall, about fifteen, and one matron.

Q. And one matron?

A. And one matron.

Q. Fifteen agents and one matron. By “matron” you mean a woman employee?

A. That’s right.

Q. I see. I take it then, is it correct, that you were expecting to make a search, were you, of a woman that you intended to arrest?

Mr. Schnacke: Object to that as calling for the conclusion of the witness and as a leading question.

Mr. Gladstein: Well, it certainly is leading but

(Testimony of William H. Whelan.)

I should have the right to ask leading questions. As far as the other objection, I——

Mr. Schnacke: I see no propriety in the asking of leading questions of a government employee, regardless of who the defendants might be.

Mr. Gladstein: May I state——

The Court: I am wondering whether or not the purpose of having an agent of the opposite sex would have any materiality.

Mr. Gladstein: It certainly would go—if your Honor will permit me to some of the factual foundations for my legal point that the conduct engaged in by the agents in the search and seizure was improper.

The Court: Well, that might be true, but I don't see what materiality there would be as to who the agents were, what the intentions were with respect—what the reasons were for having a woman officer present.

Mr. Gladstein: Well, if I might say so——

The Court: I will sustain the objection to the question in that form. What the facts are you, of course, can bring out.

Mr. Gladstein: Very well.

Your Honor, may I ask this, in view of Mr. Schnacke's objection, I should like to state that I think I should be accorded the right to ask leading questions of the witness and that the asking of leading questions should not be objectionable inasmuch as this witness is presumably, as an employee and agent of the United States the adverse party

(Testimony of William H. Whelan.)

in this case, one who occupies a position of such character as that, that I should be permitted to proceed as though the witness were under cross examination.

Mr. Schnacke: If your Honor please——

The Court: Don't argue over that. That is an abstract question in advance. You ask the questions and I will rule on them.

Mr. Gladstein: Very well.

Mr. Gladstein: Q. When and on what day approximately, Mr. Whelan, did you make the decision to make this arrest?

A. Well, the actual decision to make the arrest was made on the day of the arrest.

Q. What's that?

A. Made on the day of the arrest.

Q. When on that day?

A. Oh, approximately an hour—fifteen minutes—between thirty minutes and an hour before the actual arrest was made.

Q. Did you make that decision or communicate that decision to those who were with you——

A. Yes, sir.

Q. ——or whom you were in charge of?

A. Yes, sir.

Q. On what day did you consider—begin considering the question of arresting any of the occupants of that house?

Mr. Schnacke: If your Honor please, I will object to that as immaterial. The considerations, ideas,

(Testimony of William H. Whelan.)

prior to an arrest of the arresting agents have no materiality in such a motion as this.

The Court: I think the objection is good. Sustained.

Mr. Gladstein: Q. At the time that you made the decision to make the arrests who did you decide that you were going to take into custody under arrest?

Mr. Schnacke: Same objection, your Honor.

The Court: Yes. I can't see the materiality of the mental processes of arresting officers prior to an arrest. What were the facts at the time of the arrest, they are only material here in this proceeding. They might have had good, bad or indifferent motives. A lot of things may have entered into a decision as to making an arrest. I don't see that that has any materiality on a motion of this kind.

Mr. Gladstein: You don't wish to engage in argument——

The Court: Whatever you had in mind that is pertinent, you can certainly bring out as to the facts that occurred.

Mr. Gladstein: I want to show facts that would show that the arrest, at least as to certain of the defendants, was not lawful and not valid.

The Court: What they had in mind wouldn't have anything to do with that. The circumstances wouldn't determine the legality of the arrests.

Mr. Gladstein: Q. Mr. Whelan, you were present at the time four of these defendants were taken

(Testimony of William H. Whelan.)

into custody at this house in Twain Harte, isn't that so?

A. The word "before" there,—I don't get the meaning there. I was present at the time of the arrest.

Q. I thought I said "four". I was referring to four of the defendants.

A. Oh, excuse me.

Q. Were you present when the defendant, Patricia Blau later on was arrested?

A. No, sir.

Q. So we will confine your testimony to the arrest at Twain Harte. A. Thank you, sir.

Q. All right. You found that to be—appear to be private premises located in the town of Twain Harte, did you not?

Mr. Schnacke: Object to that as leading.

Mr. Gladstein: I will withdraw it.

Mr. Gladstein: Q. Just before you made the arrests, will you tell the Court from your best recollection a description of the premises outside and inside in which the arrests occurred?

A. Well, the premises were a cabin located, to the best of my knowledge, outside the village of Twain Harte off a secondary road, and I would judge that the cabin was located some fifty to seventy-five yards back from the road. It was an isolated cabin in the sense that there were not any other cabins visible in the area, from the road at least.

There were trees in front of it and set to one

(Testimony of William H. Whelan.)

side and to the back apparently in somewhat of a meadow on the other side, although there were some trees in it, but it was more meadow than the other territory.

The cabin itself appeared to be a two-story structure with a little porch on one side of it.

And after entering, it was noted that there was a living room and dining room, as I recall, and a lavatory and a kitchen on the first floor, and I believe two bedrooms upstairs on the second floor.

Q. As you approached, how did you approach, on foot or in automobiles?

A. In automobiles. I approached.

Q. How many such automobiles were there?

A. There were six automobiles in all.

Q. Containing agents of the Federal Bureau of Investigation? A. Yes, sir.

Q. Did you drive off the roadway onto the premises, constituting the yard area?

A. There was what I would call a driveway leading from the secondary road up to this cabin and apparently beyond this. This road also branched off and apparently went to another cabin. That I am not certain because I did not explore it, but this little roadway leads to the front of the house and to the side, in other words.

Q. So you and the other automobiles drove up the roadway toward the front of the house?

A. To the front of the house, right.

Q. When you got out did you find one or more of the defendants seated out in the yard?

(Testimony of William H. Whelan.)

A. Yes. They were not—. I found two defendants out in the yard. They were not seated. They were standing.

Q. Who were they?

A. I don't know that they were two of the defendants in this action. They were two defendants in actions, however, Robert Thompson and Sidney Steinberg.

Q. And what, if anything, was done with regard to Robert Thompson and Sidney Steinberg?

A. Well, I announced that we were agents of the Federal Bureau of Investigation and that we were there to arrest them. I called on them to surrender, as well as anyone else in the vicinity.

Q. Was there anybody else?

A. They responded by putting their hands in the air and I directed agents to go in the house—

Q. Before you go to that, tell us what was done with Thompson and Steinberg at that time, after they raised their hands.

A. I directed two positions for them to go to.

Q. What?

A. In other words, they were within ten feet—to take them out of the doorway, get them over in a safe area. I directed that they go over to two trees that were there in the yard.

Q. Yes.

A. And directed that the agents take charge of them, search them and be responsible for them.

Q. Did you tell the agents what to do or did you see what the agents did with them at that

(Testimony of William H. Whelan.)

point? A. Yes. They searched them.

Q. And what else?

A. I don't believe we searched them at that particular moment. It wasn't until after we went in and took into custody these three persons who were on the inside of the cabin.

Q. Let's stay for a moment, Mr. Whelan, with Thompson and Steinberg.

What was done with regard to them at the time they took these positions near the trees that you directed them behind?

A. Well, they were searched, sir.

Q. Isn't it true that their hands were put——

A. They—. Go ahead.

Q. ——their hands were put around trees and they were handcuffed, isn't that right?

A. No, sir, their hands were not put around trees at any time.

Q. Not at any time? A. Oh, no.

Q. Were they handcuffed?

A. Yes, sir, they were handcuffed.

Q. At that time?

A. After they were searched, they were handcuffed and permitted to sit on the ground there beside the tree.

Q. All right. Was any weapon found on them, on any of them, at the time of the search?

A. No.

Q. At that time did you or did any agent at your direction advise either of those men, that is,

(Testimony of William H. Whelan.)

Steinberg or Thompson, what they were under arrest for?

A. I believe it was—. I advised them all, in other words, when all five persons were taken outside—

Q. Officer, I asked you if, at that time, when you had Thompson and Steinberg in custody and had them handcuffed, did you, yourself, or did any agent under your direction advise either of them as to the reasons for their arrest? A. Yes.

Mr. Schnacke: If the Court please, the witness has answered.

The Witness: A. I advised them that they were being arrested because of the warrants that were outstanding for the arrest of both of them in the Southern District of New York.

Mr. Gladstein: Very well.

Mr. Gladstein: Q. Now, did you have those warrants, or copies of them, with you?

Mr. Schnacke: Object to that as immaterial. There is no necessity for the arresting officers to carry warrants with them. It is immaterial whether he has them with him or not.

The Court: What is the point of that?

Mr. Gladstein: I want to know what the authorization was that the officer had, how he received it, and the one possibility is that he had a copy of—

Mr. Schnacke: Are you denying there were warrants outstanding for the arrest of these men?

Mr. Gladstein: I am not conceding—

(Testimony of William H. Whelan.)

Mr. Schnacke: There is no issue with respect to that.

Mr. Gladstein: I am not conceding anything about the validity.

The Court: I don't think these motions would have anything to do with it.

Mr. Gladstein: But it might relate to the other arrests.

The Court: I don't see the materiality of that. I will sustain the objection.

Mr. Gladstein: Q. Did you have an arrest—warrant for the arrest of any of the defendants, other than Steinberg and Thompson?

Mr. Schnacke: Same objection.

The Court: Have you any point with respect to the others that have to do with the warrants?

Mr. Gladstein: Yes. I wish to elicit if it is the fact, and I think it is that no warrant of arrest was ever secured or issued by any authority for the arrest of the defendants other than Steinberg and Thompson.

The Court: Isn't that a matter of record?

Mr. Schnacke: It is, your Honor.

The Court: Let's not waste time about things that are not—that are in the record.

Mr. Gladstein: Can it be stipulated to?

Mr. Schnacke: I don't think there is any necessity to stipulate to the record. The record speaks for itself without stipulation.

Mr. Gladstein: The record does not speak unless it says so on the subject and, if I understand the

(Testimony of William H. Whelan.)

California question correct, I should like to state then for the record that as I understand what just happened is that it is agreed to be the truth that no warrant for the arrest of the defendants, Shirley Kremen, Carl Rasi, Carl Ross and Samuel Coleman, was ever obtained.

The Court: Are you talking prior to the arrest?

Mr. Gladstein: Prior to the arrest.

The Court: I don't see that it has any particular materiality on the motion to suppress.

Mr. Schnacke: It is correct, your Honor.

The Court: It is correct?

Mr. Schnacke: There were warrants outstanding for Thompson and Steinberg, and the arrest was made for the offense being committed in the presence of the officers by the other defendants found in the cabin.

Mr. Gladstein: Q. After Thompson and Steinberg were handcuffed did you then go into the premises themselves?

A. I don't know whether it was after they were handcuffed or not. My recollection is that it was before actually—but—yes, I did. I directed first that other agents go in and I followed them in, and all three parties on the inside were directed to come outside also, and they were directed to take particular positions—in other words in a semi-circle—where they were—the men were searched and then they were handcuffed and seated. The young lady was searched with the help of the matron.

Q. She what?

(Testimony of William H. Whelan.)

A. She was searched with the help of the matron and then she was seated on a chair, as I recall, outside by the porch.

Q. And what, if anything, did you or any of your agents say to any or all of these three people in the house?

A. They were advised that they were being arrested by virtue of the fact that they were harboring the two people who we had warrants outstanding for.

Q. Do you remember what you said in that regard, if you said anything? Did you say that to any of the defendants?

A. Yes, sir. If it wasn't in those words, it was that substance.

Q. When was that, while still in the house or after you had taken them outside?

A. While they were all outside. In other words, in every instance I tried to advise them—in other words, when they were all in each other's presence.

Q. Is this correct then, Mr. Whelan, that you found the other three defendants in the house, that would be Ross, Shirley Kremen and Coleman?

A. Yes, sir.

Q. And you gave orders to cause them to be taken outside?

A. Yes, sir.

Q. And outside there they were told they were under arrest for the reasons that you indicated?

A. Yes, sir.

Q. Were they all handcuffed?

(Testimony of William H. Whelan.)

A. They were all then handcuffed, correct.

Q. They were all subject to a personal search?

A. That's right, sir.

Q. And I take it no weapons of any kind were found on any of them?

A. That's right, sir.

Q. Then what did you do with the defendants?

A. They were fingerprinted and they were photographed. Then they were told that they would be taken in without any more delay than was necessary, to be arraigned and that in view of the fact that we had to take them to San Francisco that if they cared to make any choice of clothing they would then be taken in and could make whatever choice of clothing they desired to make to wear into the city for the arraignment, or any other material that they needed to take with them.

So one by one they were each taken in the house to make whatever change of clothes they cared to make and to pick up anything else they wanted to pick up.

They were also advised that if there was any property in the vicinity inside or outside, of a valuable nature or personal nature, since the place was located in the woods as it was, that if they would make it known we would locate it and try to safeguard it in some way.

And when the whole proceeding was completed which was within approximately an hour, they were then advised that they were going to be taken to San Francisco.

(Testimony of William H. Whelan.)

Each one was placed in a separate automobile and we came to San Francisco, arriving here shortly after six o'clock, and they were arraigned—. They were then asked to order dinner. Two stops were made on the way in. After we arrived here they ordered dinner and then the arraignment was held, as I recall sometime after eight o'clock.

Q. Now, Mr. Whelan, was it then—. On what day, that same day of the arrest, the 27th, was it, or was it some later day, that the premises at this house at Twain Harte was subjected to a search and the contents taken, the contents that constitutes this compilation that was made here some time ago?

Mr. Schnacke: As to the extent of your knowledge, Mr. Whelan.

A. Oh, I told the parties, as a matter of fact, at that time that I was leaving a group of men in order that we could expedite coming into the city and holding the arraignment, and I would leave some men to complete this search, to obtain whatever was there that should be obtained or secured, they should secure the house and should secure the automobiles also because of the location of the premises as it was in the woods, I felt that there was a necessity to secure the premises as best we could.

Q. You mean by that, in order to avoid some pilferage or loss in some manner of the items that belonged to one or the other of the defendants?

A. Yes, sir.

Q. You must have received a report at some

(Testimony of William H. Whelan.)

time in these proceedings as to the actual conduct of the search and the items that were seized. Can you not tell me from that when that was actually done?

Mr. Schnacke: Object to that as hearsay.

The Witness: A. Well the search was completed anyway.

Mr. Schnacke: Just a moment. I object to that as hearsay, your Honor.

Mr. Gladstein: Calling for information in an official report in the ordinary line and course of business.

The Court: Well, I will overrule it. The only question is when was the search made and the articles removed.

Mr. Gladstein: Yes, your Honor, that is the question.

The Court: Overruled.

Mr. Gladstein: Q. Was it that day or the next day?

A. No, it was completed that afternoon.

Q. All right. And where were the articles taken?

A. They were taken here in San Francisco to our office.

Q. When did they arrive?

A. Well, I have forgotten the exact time but it was later on that evening.

Q. Was anything at all left in the premises after this search or was everything taken out that was movable?

A. Well, anything of a—I don't really know

(Testimony of William H. Whelan.)

what was—I wasn't there, in other words, when they left. The principal things that were to be taken were those things that belonged to the—in any way to the defendants. The furniture and those sort of things—in other words, apparently it was a well-furnished cabin. There was no furniture of any sort taken.

Q. Is it correct that the directions you gave were substantially that with the exclusion of the items of furniture, such as beds, tables, chairs, that items of movable personal property were to be removed?

A. Any personal property, that's right.

Q. Your answer to my question is yes?

A. My answer to your question is personal property.

Q. Mr. Whelan, did you secure or attempt to secure a search warrant for the premises?

A. No, sir. This was conducted incidental to the arrest.

Mr. Gladstein: I move the last part of the answer be stricken. I only asked him if a search warrant had been sought.

The Court: Of course, that is the issue in the case.

Mr. Gladstein: Yes, I know, but it is for the Court rather than Mr.—I know your Honor won't be influenced by his statement of it, but I would rather——

The Court: All right, the last part of the answer, last half of the answer, may go out.

(Testimony of William H. Whelan.)

Mr. Gladstein: Q. And it is correct that no search warrant was ever obtained, isn't that correct? A. That's correct.

Q. Was there any reason why a search warrant could not have been sought from a magistrate?

Mr. Schnacke: Object to that as immaterial. The search was a valid search made incident to an arrest. There is no necessity under those——

The Court: That calls for a certain conclusion. I will sustain the objection.

Mr. Gladstein: Q. Were you searching the house for something in particular?

Mr. Schnacke: Object to that as calling for a conclusion of the witness and assuming a fact not in evidence. This witness did not make the search.

The Court: Was he searching the house for something in particular; that would call for a state of mind of those who made the search. I will sustain the objection. It is what they did that counts. That is the only thing that is involved, as it is in every such case. It is what was done.

Mr. Gladstein: Q. What were you looking for, if anything in particular, at the time that you directed the search to be made.

Mr. Schnacke: Object to that as being asked and answered, and on the further ground this witness did not make the search. He already testified he directed his agents to take from the premises the personal property that did not appear to be the furnishings of the cabin. That answers the question

(Testimony of William H. Whelan.)

as fully as this witness has indicated any ability to answer it.

The Court: Well——

Mr. Schnacke: This witness wasn't looking for anything.

The Court: Well, he was the agent in charge, but what is the last question—was he searching for anything in particular?

Mr. Gladstein: Yes. What was it that he was searching for?

Mr. Schnacke: What were you looking for?

The Court: I will sustain the objection.

Mr. Gladstein: Q. Did you tell the agents to look for anything in particular?

A. No, there was no specific matter that they were to look for in particular, but it was the general rules; in other words, that you search for whatever is incident to—any weapons, for instance.

Mr. Gladstein: Q. Did you find any weapons?

A. Any contraband or anything that would be a fruit of the crime or a part of the crime.

Q. Those were their directions, standing directions? A. Yes, sir.

Q. All right, and following this search was it disclosed whether any weapons were found on the premises?

A. No, sir, no weapons were found.

Q. Neither on the persons of the defendants or any of the persons arrested or on the premises?

A. That's right, sir.

Q. Was any contraband found?

(Testimony of William H. Whelan.)

Mr. Schnacke: Object to that as calling for the opinion and conclusion of the witness.

The Court: Yes. Sustained. You can ask him what he found?

Mr. Gladstein: Well, it consists of twenty-five pages.

The Court: Offer it in evidence. Then if it is of any importance——

Mr. Gladstein: If your Honor has it there, I will do that. I only have this copy.

The Court: Have it identified and ask him if that was the list that was taken and offer it in evidence.

Mr. Gladstein: Q. Look through that if you will, Mr. Whelan, and state if that is what it purports to be.

(Handing witness.)

The Witness: A. This list was prepared under my supervision of the material that was taken at the cabin.

Mr. Schnacke: I am sorry, your Honor, there are only two copies of this list that I know of. I have one carbon copy here.

Mr. Gladstein: I will undertake to have a copy stricken off and your Honor can have the original.

The Court: Do you want to mark that in evidence?

Mr. Gladstein: Then I will be without it.

The Court: You can withdraw it and make a copy of it.

(Testimony of William H. Whelan.)

Mr. Gladstein: Very well, your Honor, I will do that.

The Court: Any objection to this going in evidence?

Mr. Schnacke: No objection.

The Court: Do you want it marked?

Mr. Gladstein: Yes, your Honor.

The Court: Mark it in evidence.

The Clerk: Defendant's Exhibit A introduced and filed into evidence.

(Whereupon document consisting of 25 pages entitled, "Personal Property and Papers", received in evidence and marked Defendant's Exhibit A.)

Mr. Gladstein: Has your Honor had a chance to look through this?

The Court: No. Unless you want to make reference to it—You may want to make use of it.

Mr. Gladstein: Very well.

Mr. Gladstein: Q. Before undertaking these arrests did you have any information of any kind leading you to believe that the defendant, Shirley Kremen was committing any offense.

Mr. Schnacke: Object to that as not being material. The state of mind of the arresting officer is not material to this inquiry.

Mr. Gladstein: I want to say that the information that the arresting officer has in advance and when he acquires it is, I submit, most germane to the question of the validity of the search or seizure and may even go to the validity of the arrests, too,

(Testimony of William H. Whelan.)

because it is generally the rule that if the officer wants to arrest somebody and he knows about it in advance he should seek and obtain from a magistrate the warrant of arrest. He should have reasonable grounds upon which he can arrest properly, and that a magistrate shall grant the search warrant, and that is what the function of a magistrate is, to stand between the officer who wants to do the arresting and the person whose privacy is going to be disturbed. I don't know of any other way of getting these——

The Court: Of course that goes to the question of the arrest. But I don't quite know what you are getting at on the motion to suppress evidence.

Mr. Gladstein: May I say in answer then, it is this, if your Honor please, as I read the cases, and setting apart for the moment the question of the defendant, Steinberg and the defendant, Thompson——

Mr. Schnacke: How can we set that apart? That was the essential arrest made at the premises. I think it is a little difficult to set that apart from any other part of that single transaction.

Mr. Gladstein: Well, that is a matter of argument, that Mr. Schnacke is advancing, but the fact of the matter is that even if an officer has reason to believe that a person for whom there is an outstanding warrant of arrest—let us assume—is to be found in a particular location, a dwelling house, that is not a probable cause or sufficient reason to go in and arrest everybody else in that dwelling.

(Testimony of William H. Whelan.)

The Court: That all depends on the circumstances.

Mr. Gladstein: That is just what I am inquiring about. What were the circumstances?

The Court: I don't—it doesn't seem to me it is material what the state of mind of the officer was as to the persons for whom he did not have a warrant of arrest, as long as he was acting under warrants of arrest of persons whom he believed to be in a certain place.

Mr. Gladstein: He arrested them.

The Court: I don't believe his state of mind with reference to anybody else has anything to do with it.

Mr. Gladstein: I don't think it is a state of mind. I didn't ask him about his state of mind, your Honor. I asked him what information he had before he went there.

The Court: I will sustain the objection.

Mr. Gladstein: Q. Did you or did someone in superior authority to you make the decision to arrest the persons, all of them who were actually arrested that day?

A. Well I made the decision in consultation.

Q. And when was that decision made in consultation, when was the consultation had?

A. Well, in other words, if there was others—if a known fugitive is there, if there are others there that it can be said could be part of the harboring process—

Q. Was that the subject of consultation?

(Testimony of William H. Whelan.)

A. —then the others should be taken too.

Q. I say, was that the subject of consultation?

A. Yes, sir.

Q. That was the subject of the decision?

A. Yes, sir.

Q. In other words, that anybody and everybody that you found at or near the premises would be taken into custody on the theory they might be harboring, is that right?

Mr. Schnacke: That is a misstatement of the answer.

The Court: Yes. I will sustain the objection.

Mr. Gladstein: Q. Well, is it true that your consultation and your decision was to take into custody anybody and everybody who might be found on the premises with either of these men that you were looking for, is that right?

Mr. Schnacke: I object to that as a leading question.

The Court: Well, it is leading. It hasn't got much to do with that. I wouldn't pay much attention to that anyhow? How could anyone answer that question?

Mr. Gladstein: Well, he has already said that they consulted about that very matter.

The Court: There might be any number of people there. He said the consultation was—it was determined at the consultation they would take into custody anyone found on the premises that would have anything to do with possible harboring of the defendants for whom they had warrants.

(Testimony of William H. Whelan.)

Mr. Gladstein: Well, your Honor, I didn't so understand the testimony.

The Court: Well, that is what I understood him to say.

The Witness: That is what I tried to say.

Mr. Gladstein: Q. Did you find anything in the search that it was illegal for the defendants to possess?

Mr. Schnacke: I object to that as calling for the conclusion of the witness.

The Court: I don't see the materiality of this, counsel.

Mr. Gladstein: The materiality,——

The Court: He already said that there were no weapons found. Now this runs a pretty wide gamut, anything that was illegal for any person to possess. It might be any number of things.

Mr. Gladstein: Well, but that is——

The Court: Your list will show what was found. Now this calls for the opinion and conclusion of the witness. You can point out on the list if there is anything there that in law prohibits keeping. It takes too much time to go over this.

Mr. Gladstein: Certainly.

The Court: You can point that out if you want to, if there is anything there.

Mr. Gladstein: I beg your pardon?

The Court: I say, if there is anything in that list that is privileged by any statute, you can point that out.

Mr. Gladstein: I will do it the other way. I

(Testimony of William H. Whelan.)

will ask the witness to take the list and to look at it and refresh his recollection and tell us which items, if any, to be found there is forbidden by any statute to possess.

Mr. Schnacke: I object to that as calling for the conclusion of the witness.

The Court: I can determine that. I don't have to have the F.B.I. tell me what is against the law. You can point out the statute. The witness can't give an opinion on legal statutes, on the statutes, as to what is or is not prohibited by law. He can tell what he found there.

Mr. Gladstein: He has done that.

The Court: If there is anything there, that any statute prohibits you can tell me, I will take your word for it. You tell me what statute prohibits it.

Mr. Gladstein: I don't know of any statute.

The Court: All right. If there is no objection to that, let's pass on to something else. You needn't answer that. (addressing the witness.)

The Witness: Thank you, your Honor.

Mr. Gladstein: Q. What, if anything, did you find—withdraw that.

When you got there and you placed the defendants—I am talking about Shirley Kremen and Ross and Coleman—what, if anything did you see or hear them do or say that caused you to decide that they were in the course of the commission of some offense?

Mr. Schnacke: I object to that as a complex

(Testimony of William H. Whelan.)

question. The question may be what did he observe them do.

Mr. Gladstein: All right. I will break it down if that is the objection, that is, complex, to save time.

Mr. Gladstein: Q. What did you see any of them do that caused you to believe that they or any of them were committing an offense?

Mr. Schnacke: The latter part of it is what makes the question complex, actions as affecting his state of mind. He can't testify as to the actions that he observed, not as to what effect they had on his mind.

The Court: It is not the officer's opinion that determines whether or not there is a valid arrest or search and seizure. It is what was done.

Mr. Gladstein: It is what the officer says the defendants did or said as well.

The Court: You can ask him anything you want to as to what the defendants did or said. But as to the impact of that upon the witness, it wouldn't have any weight with me at all as a judge.

Mr. Gladstein: I'm sorry——

The Court: Because I wouldn't care what he thought about it. If the facts were sufficient, they are sufficient. If they are not sufficient, they are not sufficient.

Mr. Gladstein: But in order to ascertain, if your Honor please, whether the arresting officer had proper cause, I understand the decisions clearly to say that we are entitled to ascertain from him

(Testimony of William H. Whelan.)

under examination what he observed or learned by the use of his senses that caused him—led him to feel that an offense had been committed because that is the probable cause.

The Court: The probable cause lies in the facts and circumstances and not what any officer thought about it. Even if he told me on the witness stand now that the facts and circumstances were not—assuming that he would make such a ridiculous statement under the circumstances—but presuming that he said the facts and circumstances in his opinion were not sufficient to warrant him taking these people into custody, if the facts and circumstances were such that they were justified, the Court could still hold that the circumstances were sufficient because the agent might not be telling the truth now, the witness might not be telling the truth as to his state of mind. But it isn't his state of mind that determines the matter. I don't care what he says about his state of mind in the matter. It is what the circumstances were at the time. And you may go into that as much as you wish to.

Mr. Gladstein: All right.

Mr. Gladstein: Q. Were all of your agents armed, or most of them? A. Yes, sir.

Q. And the weapons were drawn and directed at the defendants? A. Yes, sir.

Q. All right. And it was after you had displayed the weapons that the search was made, that is true, isn't it? A. Yes, sir.

Q. And none of the defendants were asked for

(Testimony of William H. Whelan.)

any permission to allow the search to be made, were they?

A. They were asked, sir, but the defendants had very little, if anything, to say.

Q. They said nothing to you?

A. Very little.

Q. Well, what did they say, if anything?

A. Well, I can't say that they said nothing, but it was very little that they said, in other words.

Q. Practically nothing?

A. That's right.

Q. So, in other words, it is correct in summary to say that none of the defendants in this case said anything that had to do with the subject of harboring any of the people who were there, is that right? A. (No response.)

Q. Well, they said nothing, isn't that right?

A. They said nothing.

Q. All right. What did you see any of the defendants do at any time just before or during the arrest?

A. Well, they were, in the first place, all living together.

Q. What did you see them do?

A. Living together at this cabin.

Mr. Gladstein: I am going to move this be stricken.

The Court: That's right. All he wants you to tell him now is what did you see the defendants do at the time when you arrived there. I think

(Testimony of William H. Whelan.)

you have covered part of it already, but I don't know whether you covered all of it.

The Witness: A. Well, two of the defendants were outside.

Mr. Gladstein: Q. That is, Thompson and Steinberg? A. And Steinberg.

Q. All right.

A. And three of them were inside the house. They were dressed at that time in what I would call play clothes, sun clothes. There were some laundry on the line. The whole house looked like it was lived in. There were two cars there, as I recall.

The Court: Two automobiles?

A. Two automobiles. There was food in the house.

The Court: Of course you are going a little far afield from the question, which was only what did you see the defendants or any of them do.

Mr. Gladstein: That is the question.

The Court: Q. You have already said that you saw two of them in the yard and they were standing there and had play clothes on.

Now did you see these two defendants before you had gone to the others do anything further?

The Witness: A. Nothing except come out of the house.

The Court: Q. Well you saw the two defendants who were apprehended in the yard, you saw them come out of the house first?

The Witness: A. Yes, sir.

(Testimony of William H. Whelan.)

Mr. Gladstein: Q. And how long after they came out of the house was it that you drove up and arrested them?

A. Why, I suppose it would be within thirty minutes, thirty to forty-five minutes.

The Court: Q. They were out in the yard then?

Mr. Gladstein: Q. They were out in the yard then for about half an hour?

The Witness: A. Yes, sir.

Q. That is, Steinberg and Thompson?

A. Yes, sir.

Q. You had them under your surveillance?

A. They were recognized, yes, sir.

Q. All right. And then you arrested them and during the period that you had them under surveillance what, if anything, did you observe them do?

A. They were in the yard there talking together.

Q. Anything else?

A. Roaming around together, came out of the house together.

Q. You saw nothing else?

A. Nothing else that I recall.

Q. Then after you placed them under arrest—
I come now to direct your attention to the other people, Shirley Kremen, Coleman and Ross—what, if anything, did you see any of them do?

A. See them do?

Q. Yes.

A. I didn't see them do, in the strict sense, anything other than that they were right there and

(Testimony of William H. Whelan.)

gave every indication of being part of the living situation there.

Q. By reason of what did they give that indication?

A. As I say, it was—they were all living together at the house there.

Q. How did you know that?

A. Well, they were found together there.

Q. Anything else that led you to that conclusion.

A. Their clothes were there apparently.

Q. When did you find that out.

A. Found it out for sure right then.

Q. What was it that told you that, any of the defendants? A. No, sir.

Q. Well I come back——

A. There was just the factual situation that existed, in other words. They were there. There was a rent receipt there made out, and so forth.

Q. Made out to whom?

A. As I recall it, it was made out to Shirley.

Q. And you learned that she had rented the premises? A. That was verified later, yes.

Q. All right. You had reason to believe at the time you entered the premises that she was a lawful tenant of the premises?

A. I did not know it. We did not know that fact, in other words at that time.

Q. Did you seek to ascertain at that time?

A. I don't recall whether we sought to ascertain at that time or not, since, as I say, there

(Testimony of William H. Whelan.)

The Court: Business might be bad with you and you might run off with it. I'm being facetious, but all I am intending to say is he wants to return it to whoever establishes their right to it and whoever executes the necessary receipts and so forth, he will return it.

Mr. Gladstein: The only right that seems to me that has to be established is the right to the possession of the premises and therefore everything that is in those premises——

The Court: That is a legal question.

Is there anything else?

Mr. Gladstein: Nothing, except I would remind him if he would——

The Court: Find out who the agent was in charge.

Mr. Gladstein: Yes, sir, so I can develop the facts of that arrest.

The Court: Any questions you wish to ask, Mr. Schnacke?

Mr. Schnacke: Might we take a short recess?

(Short recess taken.)

Cross Examination

Mr. Schnacke: Q. Mr. Whelan, under your instructions had agents of the Federal Bureau of Investigation gone to the vicinity of this cabin at some time prior to this arrest? A. Yes.

Q. And on the day of the arrest, at what hour did agents of the Bureau go to the scene of the arrest?

(Testimony of William H. Whelan.)

A. Well, the first group were in the vicinity of the cabin around 6:00 a.m.

Q. And what time did you appear at the scene?

A. Just at the time of the arrest. In other words, it was about 1:00 p.m., five minutes after one.

Q. Were you in contact with the agents who were observing the cabin from 6:00 a.m. on?

A. Yes, sir, I was in contact with them by radio.

Q. And did they report to you the matters that they observed at the cabin from 6:00 a.m. up until the time of the arrest or until the time you appeared?

A. Yes, sir, they did.

Q. What was the nature of that report?

A. The nature of that report was to identify persons as they came out or went in and to name them if they could. The last report I had, Steinberg and Thompson as being present.

Q. And as coming out of the cabin?

A. As coming out of the cabin.

Q. Did you receive any report of any person going into the cabin after 6:00 a.m.

A. No, sir.

Q. Do you recall when the sun rose, when it was on this occasion, that is, August 27, 1953?

A. Well, it was right around—we were then on daylight saving time and it was right around shortly after six o'clock.

Q. So your agents observed that any persons who were in the cabin at the time of the arrest

(Testimony of William H. Whelan.)

had been there at daylight on the morning of the arrest, is that correct?

A. They could not—as I understood it, the agents could not observe anyone on the inside. They saw no one, in other words, go in during that period.

Q. Do you know when the warrant for the arrest of Robert Thompson was issued by the Court for the Southern District of New York?

Mr. Gladstein: I am going to object to that as calling for a conclusion.

Mr. Schnacke: I asked the witness if he knew.

Mr. Gladstein: I don't concede that there has been such a warrant, if your Honor please.

The Court: You mean there has never been a warrant, is that what you mean?

Mr. Gladstein: I have never been able to find out, if your Honor please, whether there was a warrant for the arrest of Robert Thompson, but if there was certainly Mr. Schnacke should be able to supply a copy of it.

The Court: What is the materiality of that?

Mr. Schnacke: I am simply trying to establish the period during which the warrants for the arrest of Thompson and Steinberg had been outstanding.

The Court: What would that have to do with this present motion? I don't see the materiality of that.

Mr. Schnacke: I will withdraw the question.

The Court: I mean, there is some case that has

(Testimony of William H. Whelan.)

been in the books on it, isn't there, that sets forth the case?

Mr. Gladstein: What, your Honor?

The Court: I say, isn't there some case in the other State?

Mr. Gladstein: There is a case in which Robert Thompson was tried for contempt. Is that the case which your Honor has reference to?

The Court: Doesn't that recite the circumstances?

Mr. Schnacke: Yes.

Mr. Gladstein: It doesn't cite anything about a warrant, so far as I know.

The Court: I don't see that there is any materiality to it.

Mr. Schnacke: No further questions.

Mr. Gladstein: Just a couple of questions.

Redirect Examination

Mr. Gladstein: Q. Mr. Whelan, did you learn what the address was of this house in which the arrests were made, did it have an address?

A. Not that I know of, sir.

Q. Did you learn who owned the property?

A. After the arrest we learned, yes.

Q. Who was it?

A. As I recall, the name was Germany.

Q. A Mr. and Mrs. Germany? A. Yes.

Q. You say that your agents were reporting to you from six a.m. that day? A. Yes, sir.

Q. What they observed and what they saw?

(Testimony of William H. Whelan.)

A. Yes, sir.

Q. What did they tell you they saw the defendant, Shirley Kremen do, if anything?

A. I don't recall that they reported anything during that period.

Q. The same question as to the defendant, Coleman, what is your answer?

A. I don't recall that they reported anything.

Q. The same question as to the defendant, Ross.

A. I don't recall they reported anything.

Q. Do you know how your agents were deployed at or about the premises, or did they report to you about that? A. Yes, approximately.

Q. And tell us how many such men there were in the general location that you told them to take.

A. There was a hill to one side of the cabin and they were deployed along that hill.

Q. All of them? A. There were five.

Q. And all were so deployed?

A. Yes, sir.

Q. Do you know whether they were in a position to see and observe every possible means by which a person might come into or leave the premises? A. That was their intent, sir.

Q. You don't know that that was so, do you?

A. No, sir.

Mr. Gladstein: That is all.

(Witness excused.)

THELMA L. GERMANY

a witness called on behalf of the defendants being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as hereinafter indicated:

The Clerk: Q. Will you please state your name to the Court. A. Thelma L. Germany.

Direct Examination

Mr. Gladstein: Q. Mrs. Germany, where do you reside, please? A. 631 Third. Modesto.

Q. You and your husband are the owners, are you not, of a piece of property in or near the village of Twain Harte? A. Yes we are.

Q. Were you the owners of that property in the summer of last year? A. Yes, sir.

Q. Have you and your husband lived in the property? A. Yes, sir.

Q. And during what period have you lived in it?

A. Well, we moved from there last—yes, it was last March.

Q. A year ago, in other words? A. Yes.

Q. Had you been living in the premises prior to that? A. Yes.

Q. For how long?

A. About a year and a half.

Q. All year around, in other words?

A. Yes.

Q. Is that a two-story house?

A. Yes, it is.

Q. And it is a dwelling house?

A. Yes, sir.

(Testimony of Thelma L. Germany.)

Q. Are there houses nearby?

A. Yes, there is a house about a hundred foot just below us and there are other houses around, but you can't see them very good for the trees. Only this side of the hill.

Q. It is a wooded area all about there?

A. Yes.

Q. As a resort and vacation area? A. Yes.

Q. And Twain Harte is not an incorporated but it is an unincorporated village or town, isn't it?

A. Yes.

Q. And it has a County road as its main road?

A. Yes, it does.

Q. And then the other roads that lead to all the other houses, including your own, they are called secondary roads, are they? A. Yes.

Q. The road to your house is the same road as the road to other houses?

A. Well, not necessarily. The road to our house leads to about, oh, three or four other houses.

Q. I see. All right. And the premises are equipped with light and gas and all the facilities for living, is that so? A. Yes.

Q. Last year some time, you and your husband decided to offer that place for rent, did you?

A. Yes.

Q. And did you place it with some agent?

A. Yes.

Q. And who was the agent?

A. Jimmy Morrow.

(Testimony of Thelma L. Germany.)

Q. And later on were you advised by him that he had a tenant for the premises? A. Yes.

Q. And you do know that it was thereafter rented? A. Yes.

Q. What was the rent?

A. \$125.00 a month.

Q. And was it paid? A. Yes.

Q. Do you know whether the rental was paid to and covering the date of August 27th of that year?

A. Gee, I don't know, you would have to ask Mr. Morrow about that. I have forgotten.

Q. He would know about that? A. Yes.

Mr. Gladstein: All right. That is all.

Mr. Schnacke: Thank you.

(Witness excused.)

JAMES MORROW

a witness called on behalf of the defendants being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as hereinafter indicated:

The Clerk: Q. Please state your name to the Court.

A. James Morrow.

Direct Examination

Mr. Gladstein: Q. Mr. Morrow, what is your business?

A. I am a real estate broker.

Q. Are you located in some particular area in this state?

(Testimony of William H. Whelan.)

The Court: Business might be bad with you and you might run off with it. I'm being facetious, but all I am intending to say is he wants to return it to whoever establishes their right to it and whoever executes the necessary receipts and so forth, he will return it.

Mr. Gladstein: The only right that seems to me that has to be established is the right to the possession of the premises and therefore everything that is in those premises——

The Court: That is a legal question.

Is there anything else?

Mr. Gladstein: Nothing, except I would remind him if he would——

The Court: Find out who the agent was in charge.

Mr. Gladstein: Yes, sir, so I can develop the facts of that arrest.

The Court: Any questions you wish to ask, Mr. Schnacke?

Mr. Schnacke: Might we take a short recess?

(Short recess taken.)

Cross Examination

Mr. Schnacke: Q. Mr. Whelan, under your instructions had agents of the Federal Bureau of Investigation gone to the vicinity of this cabin at some time prior to this arrest? A. Yes.

Q. And on the day of the arrest, at what hour did agents of the Bureau go to the scene of the arrest?

(Testimony of William H. Whelan.)

A. Well, the first group were in the vicinity of the cabin around 6:00 a.m.

Q. And what time did you appear at the scene?

A. Just at the time of the arrest. In other words, it was about 1:00 p.m., five minutes after one.

Q. Were you in contact with the agents who were observing the cabin from 6:00 a.m. on?

A. Yes, sir, I was in contact with them by radio.

Q. And did they report to you the matters that they observed at the cabin from 6:00 a.m. up until the time of the arrest or until the time you appeared?

A. Yes, sir, they did.

Q. What was the nature of that report?

A. The nature of that report was to identify persons as they came out or went in and to name them if they could. The last report I had, Steinberg and Thompson as being present.

Q. And as coming out of the cabin?

A. As coming out of the cabin.

Q. Did you receive any report of any person going into the cabin after 6:00 a.m.

A. No, sir.

Q. Do you recall when the sun rose, when it was on this occasion, that is, August 27, 1953?

A. Well, it was right around—we were then on daylight saving time and it was right around shortly after six o'clock.

Q. So your agents observed that any persons who were in the cabin at the time of the arrest

(Testimony of William H. Whelan.)

had been there at daylight on the morning of the arrest, is that correct?

A. They could not—as I understood it, the agents could not observe anyone on the inside. They saw no one, in other words, go in during that period.

Q. Do you know when the warrant for the arrest of Robert Thompson was issued by the Court for the Southern District of New York?

Mr. Gladstein: I am going to object to that as calling for a conclusion.

Mr. Schnacke: I asked the witness if he knew.

Mr. Gladstein: I don't concede that there has been such a warrant, if your Honor please.

The Court: You mean there has never been a warrant, is that what you mean?

Mr. Gladstein: I have never been able to find out, if your Honor please, whether there was a warrant for the arrest of Robert Thompson, but if there was certainly Mr. Schnacke should be able to supply a copy of it.

The Court: What is the materiality of that?

Mr. Schnacke: I am simply trying to establish the period during which the warrants for the arrest of Thompson and Steinberg had been outstanding.

The Court: What would that have to do with this present motion? I don't see the materiality of that.

Mr. Schnacke: I will withdraw the question.

The Court: I mean, there is some case that has

(Testimony of William H. Whelan.)

been in the books on it, isn't there, that sets forth the case?

Mr. Gladstein: What, your Honor?

The Court: I say, isn't there some case in the other State?

Mr. Gladstein: There is a case in which Robert Thompson was tried for contempt. Is that the case which your Honor has reference to?

The Court: Doesn't that recite the circumstances?

Mr. Schnacke: Yes.

Mr. Gladstein: It doesn't cite anything about a warrant, so far as I know.

The Court: I don't see that there is any materiality to it.

Mr. Schnacke: No further questions.

Mr. Gladstein: Just a couple of questions.

Redirect Examination

Mr. Gladstein: Q. Mr. Whelan, did you learn what the address was of this house in which the arrests were made, did it have an address?

A. Not that I know of, sir.

Q. Did you learn who owned the property?

A. After the arrest we learned, yes.

Q. Who was it?

A. As I recall, the name was Germany.

Q. A Mr. and Mrs. Germany? A. Yes.

Q. You say that your agents were reporting to you from six a.m. that day? A. Yes, sir.

Q. What they observed and what they saw?

(Testimony of William H. Whelan.)

A. Yes, sir.

Q. What did they tell you they saw the defendant, Shirley Kremen do, if anything?

A. I don't recall that they reported anything during that period.

Q. The same question as to the defendant, Coleman, what is your answer?

A. I don't recall that they reported anything.

Q. The same question as to the defendant, Ross.

A. I don't recall they reported anything.

Q. Do you know how your agents were deployed at or about the premises, or did they report to you about that?

A. Yes, approximately.

Q. And tell us how many such men there were in the general location that you told them to take.

A. There was a hill to one side of the cabin and they were deployed along that hill.

Q. All of them?

A. There were five.

Q. And all were so deployed?

A. Yes, sir.

Q. Do you know whether they were in a position to see and observe every possible means by which a person might come into or leave the premises?

A. That was their intent, sir.

Q. You don't know that that was so, do you?

A. No, sir.

Mr. Gladstein: That is all.

(Witness excused.)

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Mr. Gladstein: All right. That is all.

Mr. Schnacke: Thank you.

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A. James Morrow.

Direct Examination

Mr. Gladstein: Q. Mr. Morrow, what is your business?

A. I am a real estate broker.

Q. Are you located in some particular area in this state?

(Testimony of James Morrow.)

A. Twain Harte, California, Tuolumne County.

Q. How long, approximately, have you been operating that business there?

A. About seven years.

Q. Some time in the late spring or early summer of last year did you have occasion to take over for rental purposes a house belonging to Mr. and Mrs. Germany? A. I did.

Q. And did you subsequently have occasion to rent those premises?

A. Actually the house was given to me for sale and the rental of the property was not—did not enter into the original agreement and I was approached by Mrs. Lee Kaplan, desiring to rent a cabin, that was secluded and quiet because her brother was ill with nerves and she wanted to be where they would be by themselves, and I showed Mrs. Kaplan, I believe, one or two cabins in the park property——

The Court: You are getting far afield. The question was, did you have occasion to rent it. Did you rent it?

A. I asked Mr. and Mrs. Germany by phone if they would consider renting their cabin.

The Court: You don't have to go into all of that. The only question is did you rent it?

A. Yes I did, your Honor.

The Court: Go ahead.

Mr. Gladstein: Q. When did you do that, Mr. Morrow?

(Testimony of James Morrow.)

A. Well, the rental date started approximately June 26, 1953.

Q. And the rental was paid for how long?

A. Mrs. Kremen paid—or Mrs. Kaplan paid the rental monthly in advance.

Q. And was the rent paid for—in other words, it was paid from a date in June to cover a date in July?

A. Yes, sir.

Q. And then when the monthly rent was due in July she paid another month's rent?

A. Yes, sir.

Q. And there was some conversation about how long she was going to have the place was there?

A. Well, Mrs. Kaplan mentioned a minimum of three months, possibly four months.

Q. The rent was fully paid by her on August 27, the date she was arrested there, isn't that so?

A. Yes, the rent was paid if I remember correctly, up to and including the 25th of September.

Mr. Gladstein: (Speaking to spectator): Will you stand up, please? (A person in the Courtroom standing.)

Mr. Gladstein: I have asked the defendant, Shirley Kremen to stand.

Mr. Gladstein: Q. Do you recognize her as the lady to whom you rented the premises?

A. I do.

Q. She is the person?

A. That is the lady.

Mr. Gladstein: That is all.

(Testimony of James Morrow.)

Mr. Schnacke: Thank you.

(Witness excused.)

(Discussion between Court and counsel relating to further evidence to be presented.)

(Whereupon the matter was continued until 9:30 o'clock a.m. on April 6, 1954; further continued to 9:30 o'clock a.m. on April 13, 1954.)

[Endorsed]: Filed July 1, 1954.

[Title of District Court and Cause.]

EXCERPT OF VOIR DIRE EXAMINATION OF THE JURY

Monday, April 12, 1954

The Court: Members of the jury panel: the case on trial today is a criminal proceeding: United States of America against Shirley Kremen, also known as Lee Kaplan; Patricia Julia Blau, also known as Janet Conroy; Carl Edwin Rasi, also known as Carl Ross and Robert Edward Newman; Samuel Irving Coleman, also known as William B. Gordon; Sidney Steinberg, also known as Sid Stein and Joshua Newberg.

The Grand Jury for this District on September 16, 1953, filed in this court an indictment. And indictment is a charge or complaint setting forth the violation of federal statutes which the Grand Jury claims have been committed by the defendants.

This indictment or charge is in four counts, four separate charges made against the defendants in the indictment, which are in substance as follows:

(Reading indictment.)

That is the general nature, members of the jury panel, of the criminal charge that has been filed herein.

Each of these defendants has appeared and pleaded not guilty to the charges contained in the four counts of this indictment. That has put at issue all of the material allegations of this indictment. It is to resolve the question of the guilt or innocence of the defendants, and each of them, on the issues thus raised that the jury is to be selected here this morning.

Let me say to you in the first instance, members of the jury panel—and it should be borne in mind at all stages of the case—as in every criminal proceeding, by the filing of an indictment there is no presumption that the defendants or any of them are guilty of the charge made against them. To the contrary, it is traditional in our system of justice that the persons charged with a criminal offense are presumed to be innocent. That presumption exists in this case and it continues until such time as the Government convinces the jury beyond a reasonable doubt of the guilt of the defendants, and thus only may a verdict of guilty be found against the defendants, or any of them.

As in all criminal cases, members of the jury panel, the United States, being the plaintiff or prosecuting party, the Government is represented

by the United States Attorney's Office of the district. In this district the United States Attorney is Mr. Lloyd Burke, and the prosecution of this particular case is in the hands of Assistant United States Attorney Robert H. Schnacke and Richard H. Foster, who sit facing the jury box. All of the defendants except the defendant Steinberg are represented by attorneys Richard Gladstein and Norman Leonard, who sit at that table (indicating).

* * * * *

Mr. Gladstein: Would your Honor be good enough to inquire, if there is some evidence offered by the prosecution that connects any of the defendants with communism or the Communist Party, either now or in the past, would that influence the jury against such defendant and prejudice them against giving the defendant a fair trial?

Or, to put it differently, your Honor, if the fact were or if it were shown one or more of the defendants was a communist or had been, in view of Mr. Dolin's answer would he feel prejudiced against that defendant?

The Court: Well, perhaps I might say this to the jury: I have read to you in the indictment the specific charge that is made against each defendant.

One count charges the defendants with being accessories—that is the statutory form of that charge—in concealing or aiding this man Thompson against his apprehension by the authorities, and the defendants are charged with conspiracy to permit that offense. Likewise, there is a similar charge

with respect to harboring the defendant Steinberg. That charge is made against the other defendants. And also they are charged with conspiracy to do that.

It may be that in connection with the evidence in the case—I don't know. I don't know what the evidence is going to be in the case any more than you do—it may develop, as Mr. Gladstein has suggested, that the defendants may be members of the Communist Party or may be communists or may be members of other parties.

They are not charged in this proceeding with any such offense, if there be such an offense. They are charged only with the specific act that I have described several times to you in detail as charged in the indictment, and only that.

They might be Catholics or Protestants or Jews or Republicans or Democrats or members of all different sorts of organizations, and that may appear in connection with the matter. But they cannot be found guilty of the charge against them unless the jury is convinced beyond a reasonable doubt that they committed the offense that is charged in the indictment.

Now, are there any members of the jury who now feel they could not fairly try the defendants on the specific charge contained in the indictment, and give them a fair, square trial, decide the case upon the basis of the evidence and follow the Court's instructions, and generally give a square deal to the defendants? Is there anyone in the jury box, after the statement I have made to you, that has any doubt

about his or her respective ability to act and perform the honest duty of a juror?

I think I have pretty generally covered what you have in mind, haven't I?

Mr. Gladstein: Yes, your Honor.

The Court: Is there anything else that you have?

Mr. Leonard: Would your Honor examine our proposed questions 13 and 14 and consider whether he will put those to the jury?

The Court: Well, I think that my statement to the jury was general enough to cover this matter, Mr. Leonard. I don't think there is any need to elaborate on it.

[Endorsed]: Filed June 10, 1954.

[Title of District Court and Cause.]

OPENING STATEMENT IN BEHALF OF PLAINTIFF

Monday, April 12, 1954

The Clerk: U. S. vs. Kremen, et al.

The Court: Do you wish to make an opening statement?

Mr. Schnacke: Yes, Your Honor.

Ladies and gentlemen of the jury, Your Honor please:

At this initial stage of the proceeding it is customary for the Government and for the defendants, if they so desire, to make what is termed an opening statement. The opening statement is not an

argument but it is an effort on our part to tell you what we consider the charges against the defendants to be and outline for you very briefly the evidence that we intend to present to you to substantiate the charges that have been made.

The evidence, as of course you are aware has to come to you through various witnesses who will take the witness stand and through various items of evidence that will be presented to you physically. The testimony of the various witnesses and the physical evidence will very probably be meaningless to you until everything is before you unless in advance we told you in general what the issues of the case were, what things we are trying to prove and demonstrate to you. With that as a preliminary explanation of the case, I think you will better be able to place in their proper roles, much as you would the items of a jigsaw puzzle, the various things that are going to be presented to you.

We can't give you the whole case at one time or from one witness or one piece of evidence. The case will be built up from a multiplicity of things, and all those things will have their proper place and are to be considered by you in your ultimate determination.

Some of you were sitting in the rear of the courtroom this morning when the Court read the indictment. In view of the fact that the indictment is the basis of the charge against these defendants, because that specifies specifically the things that the Government is obligated to prove, I don't think we

are over-emphasizing the indictment if I should read the significant parts of it to you again.

The first count of the indictment charges that:

“On or about the 14th day of October, 1949, Robert G. Thompson was convicted in the United States District Court for the Southern District of New York for the offense of wilfully and knowingly conspiring to (1) organize a society for the overthrow and destruction of the Government of the United States by force and violence; and (2) advocate and teach the overthrow and destruction of the Government of the United States by force and violence; the aforesaid being in violation of Sections II, III and V of the Act of June 28, 1940, commonly known as the Smith Act.”

And in the first count it is further charged that:

“On or about the 27th day of August, 1953, in the Northern District of California, in the vicinity of Twain Harte, Tulolumne County, California, the defendants Shirley Kremen, Patricia Julia Blau, Samuel Irving Coleman, Sidney Steinberg and Carl Edwin Rasi, knowing that the offense aforesaid had been committed and that the said Robert G. Thompson had been convicted of committing the same, did receive, relieve, comfort and assist the said Robert G. Thompson in order to hinder and prevent his apprehension and punishment.”

The second count of the indictment charges that:

“At a time and place to the Grand Jury unknown, in the Northern District of California and elsewhere, the defendants Shirley Kremen, Patricia Julia Blau, Samuel Irving Coleman, Sidney Stein-

berg and Carl Edwin Rasi, unlawfully, wilfully and knowingly did conspire with each other and with divers other persons to the Grand Jury unknown.

“That the object of this conspiracy was to commit, in violation of Section III of Title 18 of the United States Code, the offense of receiving, relieving, comforting and assisting Robert G. Thompson, in order to hinder and prevent the apprehension and punishment of the said Robert G. Thompson, while the said defendants well knew that the said Robert G. Thompson had violated Sections II, III and V of the Act of June 28, 1940, commonly known as the Smith Act.”

That pursuant to the conspiracy, certain overt acts were committed. His Honor read those overt acts to you this morning. I think it isn't necessary to read those again. It is sufficient at this time simply to say that an overt act is an act done in pursuance of the conspiracy.

Now, a conspiracy generally is something like a partnership. It is an agreement, but an agreement to do an unlawful thing. In this particular thing the agreement is to harbor Robert Thompson from apprehension and punishment.

The overt acts charged in the indictment are not themselves crimes. The crime is not in the commission of one or all of the overt acts. The crime lies in the illegal agreement and in the doing of some act, however innocent that act by itself might be, but in the doing of some act in furtherance of the illegal agreement.

That, then, is the gist of the second count.

Those two counts, you will notice, refer to the protection of Robert Thompson from apprehension and punishment. The third and fourth counts deal with the protection of Sidney Steinberg from apprehension and punishment, the harboring and concealing of Sidney Steinberg. The third count reads as follows:

“That on or about the 27th day of August, 1953, the defendants Shirley Kremen, Patricia Julia Blau, Samuel Irving Coleman and Carl Edwin Rasi, with notice and knowledge of the fact that a warrant had been issued for the apprehension of Sid Stein, also known and named herein as Sidney Steinberg, did, in the Northern District of California, in the vicinity of Twain Harte, Tuolumne County, California, harbor and conceal, so as to prevent his discovery and arrest, the said Sid Stein, also known and named herein as Sidney Steinberg, for whose arrest a warrant had been issued pursuant to law by the United States District Court for the Southern District of New York.”

The fourth count, again a conspiracy charge, charges:

“That, at a time and place to the Grand Jury unknown, in the Northern District of California and elsewhere, defendants Shirley Kremen, Carl Edwin Rasi, Patricia Julia Blau and Samuel Irving Coleman, unlawfully, wilfully and knowingly did conspire with each other, with Robert G. Thompson, named herein as a co-conspirator but not as a defendant, and with divers other persons to the Grand Jury unknown.

“That the object of this conspiracy was to commit, in violation of Section 1071 of Title 18, United States Code, the offense of harboring and concealing, so as to prevent his discovery and arrest, Sidney Steinberg, while said defendants well knew that a warrant for his arrest, under the name of Sid Stein, had been issued on the 20th day of June, 1951, pursuant to law by the United States District Court for the Southern District of New York.”

And, again, the allegation is that, pursuant to the agreement, certain overt acts were performed.

That, then, is the charge laid against the defendants. Basically it is divided into two parts. The defendants tried to prevent the apprehension, arrest and punishment of Robert Thompson. They agreed to commit that crime. The defendants, with the exception of Sidney Steinberg, tried to prevent the apprehension and arrest of Sidney Steinberg, and they formed an unlawful agreement to commit that crime.

The elements of crime that you must find in order to find a verdict of guilty against all of these defendants will be outlined to you by the Court in detail. But generally we must show, I would think, that Thompson and Steinberg were fugitives from justice. We must show that these defendants knew or had reason to know of their fugitive status. We must show that with that knowledge they did something to accomplish the hiding and concealment, the assistance to the prevention of the punishment of Steinberg and Thompson.

And insofar as the conspiracy count is con-

cerned, we must show you from the evidence that there was a joint activity indicative of an agreement, of a conspiracy, between those persons charged here.

The evidence may well show that the conspiracy spread beyond, far beyond, the defendants that are sitting at this table. But the charge is against these defendants. While there may be other conspirators in the conspiracy itself, the conspiracy itself as charged as an offense is charged against the defendants we see here today.

Now, at this time it might be advisable, and before I start telling you of the evidence that we intend to present to you, it is advisable, I think, to caution you that what I am now telling you is not evidence. My comments are merely my expression at this time of what the evidence will show, and when I come to the final argument with you it will be my opinion as to what the evidence did show. But nothing that I can say to you should have any bearing upon your consideration of the evidence. My statements are not evidence.

Similarly, the statements of counsel for the defendants are not evidence. And, again, if any of the defendants choose to represent themselves, the statements that such a defendant make to you as an argument is not to be considered by you as evidence. Evidence is what you hear from the witnesses sitting on that witness stand and sworn to tell the truth. Evidence is what you get from the physical documents and physical things that will be presented to you after having been duly admitted into

this trial. Nothing else is evidence. The rest of it is simply argument or comment on the evidence and not to be considered by you except in that light.

Now, as to the evidence that will be presented in this case: We will present to you the records of the Federal Court for the Southern District of New York showing the conviction of Robert Thompson; showing his being released on bail after conviction and pending appeal; showing his failure to appear at the court at the time required of him; showing the issuance of a warrant for his arrest pursuant to his failure to appear, and showing that he did not appear in that Court until after he had been apprehended at Twain Harte in August of last year.

As to the defendant Sidney Steinberg, we will show you that a Grand Jury in the Southern District of New York returned an indictment against him, and that pursuant to that indictment a warrant was issued for the arrest of Sidney Steinberg. From June, 1951, when that warrant was issued, and until the time of his apprehension at Twain Harte, the defendant Steinberg did not appear in the courts in New York.

On August 26th of last year, the day before this arrest occurred, an F.B.I. agent visited that cabin at Twain Harte about which you will hear so much before this trial is over. He saw there a very innocent pastime going on: The Defendant Coleman, along with the fugitive Robert Thompson, playing Ping-pong. He saw Shirley Kremen at the premises on that occasion. He saw an automobile there. He had occasion to pass those premises at midnight on

the 26th. He saw no one about the cabin, lights on inside, two automobiles outside the cabin.

From sunrise on the 27th of August that cabin was kept under surveillance. No persons came from the outside area into that cabin during the period the cabin was watched. Persons came in and out of the cabin carrying on their normal daily activities, but no new people appeared. The two automobiles that had been sitting there at midnight the night before were still there.

About 1:05 on that date, just shortly after noon, the arrest was made in the cabin of the defendant Steinberg on the warrant issued against him in New York; of Robert G. Thompson on the process outstanding against him from New York; and against the other persons found in that cabin. The other persons were Shirley Kremen, Carl Ross and the defendant Coleman.

You will learn of the attempts made by the defendants Steinberg and Robert Thompson to change their appearance; of how far different they looked at the time of their apprehension at Twain Harte from the way they had looked when they left New York.

You will find from the evidence that the cabin was well settled, well prepared to harbor and conceal these defendants, these fugitives. The cabin was well secluded. The cabin was specifically designed, specifically selected for the task given to it. You will learn from the evidence that the cabin contained considerable paraphernalia designed specifically for the purpose of harboring these fugitives.

What sort of paraphernalia would that be? Well, in the first place, of course, food and clothing to provide these fugitives with the necessities of life. A substantial number of false identification documents for each of those persons in the cabin. None of the defendants was found there with any identification in his true name. Every person in that cabin had false identification documents. The accounting records, in rough form, to be sure, but accounting records indicating a well organized, well designed plan to get money, spend money, and to spend it for the purpose of protecting these fugitives. And other documents designed as directives to and from the persons in the cabin, telling them why it was necessary to conceal these fugitives, how they were to be concealed.

Documents designed to set up secret meeting places, secret meetings between persons not known to the other one. The whole arrangement, whole paraphernalia, whole design of an underground hiding place for these Communist leaders.

Now, the defendant Blau: Patricia Blau was not arrested in the cabin. A curious thing occurred when the agents came into the cabin. On examining some of the documents that they found there, they found a telephone number. That telephone number was determined to be the telephone number of the residence of Patricia Blau.

They found an automobile—an automobile registered in the name of Janet Conroy. Janet Conroy lived at the address where the telephone number

was listed. Janet Conroy, the evidence will show to you, is the defendant Patricia Blau.

There was also an indication that there was to be a meeting that evening between someone and the defendant Blau. The Federal Bureau of Investigation, you can be sure, didn't overlook that meeting. They were present. They followed the persons who met. They determined that the registered owner of the automobile found in the cabin was one of the people who made that meeting. They followed them for a time with this defendant apparently discovered that she was being followed, started tearing up documents and throwing them out of the car window, at which time the arrest was made.

The evidence will show that this defendant, Blau, had been present at the cabin and had made her contribution to this conspiracy.

Now, I want to say in this connection that these defendants are not charged with being Communists, and we have no intention of asking this jury to convict these defendants because they are Communists. The subject of Communism, however, must come up in this trial. I think it is probably already apparent to you why it must.

These defendants had no personal interest. Their interest in this illegal behavior of which the Government charges them to be guilty derived from their devotion to the Communist Party. The conspiracy was a Communist Party conspiracy to protect its leadership. These people were the pick of the people—these people—the ones designated by the Party to do the job of protecting Thompson

and Steinberg. They followed orders like good Communists.

To that extent, then, to show their motivation, to show why they so acted, to show their knowledge of the background and activities and the matter of the fugitive status of the people they were harboring, to that extent it will be necessary to discuss Communism, to discuss the connection of these persons with the Communist Party.

But I do not urge upon you—. Put it another way: I strongly urge you to bear in mind that Communists or not, these people are entitled to a fair trial; these people are entitled, as the Court will tell you, to a reasonable doubt, and whether you find them to be Communists or not is completely immaterial except insofar as it goes to their motivation. In order to find these defendants guilty you must find more than that they are Communists. You must find that they did the acts and had the unlawful agreement that the Government has charged against them.

Now, in the Communist Party a spade is rarely called a spade. Fugitives are never called fugitives. These fugitives are referred to as "Political Refugees," to put them in a class with other political refugees of history. You never talk about subversive organizations. You never talk about hiding people out. You talk about security measures. You never talk about these people as being fugitives from justice. You talk about them as being an "Unavailable Leadership."

You never talk about the forces of justice. You

never talk about the Federal Bureau of Investigation—you talk about the “Fascist Police.”

And the ultimate aim, of course, of the Communist Party is “Democratization.” And anybody who cooperates with the Government is a “Stool Pigeon.”

These are all well-defined terms from the Communist lexicography. And these terms will appear from time to time throughout the trial. I define them to you now so you will understand the true meaning of those terms when they come to **your** attention.

This conspiracy, this plan or plot of the Communist Party to protect its leadership is not something that was working on a low level. The evidence I think will make it clear to you that the directions for this conspiracy came from the top in the United States and beyond.

That this conspiracy was effective, that it was well planned, that the members of the conspiracy worked hard to do their jobs, is adequately proved by the number of years these defendants were concealed from the processes of law.

The conspiracy, as the evidence will show, imposed upon the members of it, unquestioned obedience. If pursuant to the conspiracy these defendants were told to move, the evidence will show they moved. If they were told to change their names, they changed their names. “Change your job,” you change your job. The individual is meaningless. The function of the Party and of the conspiracy here was, at the sacrifice of any individual, to conceal

these leaders from apprehension and punishment. That is why these secret meetings were set up that the evidence will show you. That is why, as you will agree from the evidence, there was this very, very strict and stringent inquiry into everybody that was to become an agent in this conspiracy.

The local organization that was set up in this area with the responsibility of the hiding of one of these fugitives for a certain period of time and the other for a relatively shorter period of time, was an organization known, for some reason or other, as "Mollie." That was the designation given to what they call an organization of unavailable leadership in this area. Sometimes it is designated as "No. 2" as distinguished from "No. 1," which would be the available or open leadership; that is, those members of the Party who did not have to go underground or did not choose to go underground would be the ostensible leaders, the No. 1, but the No. 2, that was the unavailable leaders. Those were the fugitives from justice, or at least that was the organization that dealt with the fugitives.

The evidence, I think, will make it clear to you that Sidney Steinberg was one of the members of "Mollie," or No. 2, in California. Carl Ross was another member. There were apparently two other members who are not here with us today.

But the function of this "Mollie" was quite clear. An examination of the financial records of it will make it clear that its major expenditures were for the protection of Mr. Steinberg. Major preparations were made to conceal this unavailable leadership.

Another function of "Mollie" as expressed by the Party was that the leadership should not merely be concealed and secured. The leadership must be a working leadership. That is, these underground fugitives were to continue their party work in spite of the fact that they were wanted by the "Fascist Police," and it was in order to permit them to continue that work that this conspiracy grew up.

Now, just who were the fugitives in this case? And, for that matter, who are the defendants?

In order to know what contribution each of them could make, and why he made his contribution, and why it was so important to conceal these fugitives, we will introduce evidence to show what the status was of these persons in the Communist Party.

Robert G. Thompson, who had been convicted of violating the Smith Act, had been the head of the Communist Party in the State of New York and one of the principal functionaries of the Communist Party in the United States.

Sidney Steinberg had been active in the New York area for the Communist Party for many, many years and finally had risen to the rank of Assistant National Secretary of the Communist Party.

Is there any wonder that the Party desired to protect that leadership?

The defendant Coleman had been active for years with the Party in New York. The defendant Ross had been active both in New York and in Minnesota, and had risen to the rank of State Chairman, I believe, in Minnesota.

The four I have mentioned—Thompson, Steinberg, Coleman and Ross—all worked together at one time or another in Communist headquarters in New York. They were all well acquainted with each other, well acquainted with each other's background and character, well acquainted with the status of the others in that organization. When Steinberg and Thompson became fugitives, Coleman and Ross could not help but know who they were and that they were fugitives. When they assisted them, they knew they were assisting fugitives from the law.

The defendant Blau was an active Communist Party organizer in Denver. She has met on many occasions, has attended conferences and meetings with the defendant Sidney Steinberg. She has on occasion indicated her familiarity with the Communist trials that were held on the east coast and from which Thompson and Steinberg were fleeing.

The defendant Kremen, the youngest of the defendants, is in a somewhat different category. She was a school girl radical down at a college in Los Angeles. She was an avid reader of *The People's World*, which gave considerable publicity to the Smith Act trial and to the fugitive status of these defendants. But so far as we know she has never held any important position in the Communist Party.

The evidence will show, none the less, that a highly responsible obligation was placed upon her by the Party. She and her husband, who is not charged here, but whom the evidence will show to be another of the conspirators, were charged with

the responsibility of hiding out the defendant Sidney Steinberg for a considerable period of time. She was the one who did much of the shopping, much of the caring for and housework around the Twain Harte cabin. She was the one that was used as the front at the cabin. I think you will be satisfied from the evidence that she knew what she was doing and that she knew why she was doing it.

Well, what, then, are the contributions of each of these defendants to this offense?

The defendant Coleman, up until the year 1951, was living openly in the City of New York with his wife and family. In 1951 he disappeared into the Communist underground. The evidence will show that Mr. Coleman in April of 1953 appeared in St. Louis, Missouri, not as Coleman—as William Gordon: And as William Gordon he bought an Oldsmobile automobile in April, 1953. In June of 1953 he turned that Oldsmobile automobile in on a brand new Hudson automobile—again, as William Gordon.

Thereafter, at various times William Gordon, in the company of Robert Thompson, the fugitive leadership, will be found around the country at various secluded spots: in the middle of the Ozark country, at the Lake of the Ozarks. Coleman, as Gordon, and Robert Thompson and two unidentified women will be found there on two occasions.

In August of 1953 Thompson will be found up in the northern reaches of Montana. There he uses the name, not Thompson—John Brennan, and as John Brennan he buys a fishing license. That fishing license will ultimately be found in the cabin on the

search that was made there. With John Brennan—Robert Thompson—in Montana is the defendant Coleman, again under the name of Gordon.

On August 20, 1953, seven days before the arrest, the automobile that Gordon had bought in St. Louis is found entering California in the little town of Dorris. There were four people in the automobile, two men and two women. On August 27th and on the day prior Coleman and Thompson are found together at the cabin at Twain Harte, together with some essential amounts of literature identifying each of them as somebody other than the person they are: identification for Thompson as John Brennan; identification for Coleman as William Gordon.

The defendant Carl Ross, known at one time as Carl Rasi, lived openly and under his true name in Minneapolis, Minnesota, until late in 1950. Then he, too, disappeared into the Communist underground, leaving a family behind him at the home in which he had resided.

Carl Ross we find again in July of 1953 over in Oakland when, after identifying himself as someone named Robert Newman, he buys a duplicating machine, a mimeograph type machine, over there and certain supplies, both of which are to be found at the Twain Harte cabin, along with a substantial amount of identification data, none of it bearing the name Carl Ross or Carl Rasi, but a substantial amount of it bearing the name Robert Newman. During the period of July and August Carl Rasi

will have been seen throughout the Twain Harte area on various shopping errands.

Defendant Steinberg is charged with the responsibility of harboring Robert Thompson. He disappeared from his home in New York in June of 1951, and we find him in July of 1953 there in Twain Harte pretending to be Joshua Newberg, teacher of the mandolin, claiming that Shirley Kremer here is his sister. And Shirley Kremen made the same claim, that she is the sister of Steinberg.

At the time of Steinberg's arrest, substantial numbers of false identification papers will be found identifying him as Joshua Newberg. Nothing to identify him as Sidney Stein or Sidney Steinberg. The cabin was obtained for him, as Mrs. Kremen told the real estate agent from whom she leased the cabin. As one of the leaders of "Mollie," or No. 2, it is quite clear the defendant Steinberg was the man in charge at the cabin, and that the cabin was there for the purpose of concealing both himself and, on his arrival, Robert Thompson.

The defendant Shirley Kremen was living with her husband, Kremen, in Los Angeles until the early part of 1952, at which time both of them left Los Angeles and appear in San Jose where they identify themselves not as Irving and Shirley Kremen, but as Lee and Dick Kaplan.

They take living accommodations in San Jose. Apparently there is a mysterious stranger living with them.

In June of 1953 Shirley Kremen announces that

she is leaving San Jose to go to the mountains to take care of a sick aunt. Well, of course, there is no sick aunt, but she does appear in Twain Harte looking for a cabin for her sick brother.

Defendant Kremen obtained the cabin, did the shopping, obtained servicing for the automobile, did, as you will hear, a variety of other things in and around the cabin up there to make the cabin livable and comfortable for Steinberg and Thompson.

The defendant Patricia Blau is also the Janet Conroy who lived and worked in San Jose. She is also the Patricia Blair who lived and worked in Denver, Colorado. She is also the Betty Miller who lived and worked in various places. And, as I pointed out, she is also an important functionary in the Communist Party.

Her contribution to the conspiracy was the acquisition of an automobile. She wouldn't drive the automobile. She made the salesman drive the automobile himself to a place where it could be picked up. She was never seen driving the car, and the car was found at the cabin when the defendant Blau is not there. Fingerprints taken at the cabin will indicate she had been there on occasions.

Well, that in general is the evidence that will show the contribution of each of these defendants to this well-defined, well-organized conspiracy to conceal from the apprehension of the Federal Government Steinberg and Thompson. I think the evidence of the conspiracy, the evidence of the acts done by these defendants in pursuance of the con-

spiracy, the knowledge of these defendants, the motivation of these defendants, will be ample to convince you that all of these defendants are guilty as charged in the indictment.

The Court: Do you want to reserve your statement?

Mr. Gladstein: Yes, I will reserve it, Your Honor. But I should like to address a motion to Your Honor, and for that purpose I ask the jury be excused.

The Court: Well, there are some matters I think we should take up between counsel and the Court anyhow.

Mr. Schnacke: Yes, Your Honor.

The Court: The jury will have a brief recess, and court will remain in session. Please bear in mind the admonition I gave you. The Bailiff will take you out to the juryroom.

(Thereupon the jury left the courtroom and motions were made and argued by respective counsel outside the presence of the jury.)

[Endorsed]: Filed June 10, 1954.

[Title of District Court and Cause.]

PROCEEDINGS ON MOTION TO SUPPRESS
EVIDENCE

Tuesday, April 13, 1954

Before Hon. Louis E. Goodman, Judge.

(Court convened at the hour of 9:30 a.m.
and the following proceedings were had outside the presence of the jury:)

The Clerk: United States versus Kremen, et al; motion to return seized property and motion to suppress evidence, further hearing.

Mr. Schnacke: Your Honor please, the Government agreed with the attorney for the defendants that we would provide the witnesses who were acquainted with the facts surrounding and leading to the arrest of the defendant, Patricia Blau. There are two witnesses who have information bearing upon that point, one of them having information concerning matters at the Twain Harte cabin, which were preliminary matters leading to the arrest. That agent is Roy Erickson.

The other agent who participated in and was present at the arrest is Agent Shedd. Both of those agents are present in court for the convenience of the defendants.

Mr. Gladstein: I will call Mr. Erickson if I may, your Honor.

ROY ERICKSON

called as a witness on behalf of the defendants, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

The Clerk: Please state your name to the Court.

The Witness: Roy Erickson.

Direct Examination

Mr. Gladstein: Q. Mr. Erickson, you are already identified in the record as the same Mr. Erickson who took the stand here yesterday and testified? A. Yes, sir.

Q. You have some personal knowledge as to the circumstances leading up to the arrest of the defendant, Mrs. Patricia Blau? A. Yes, I do.

Q. What is that knowledge?

A. While in Twain Harte, immediately following the arrests, I conducted a search of the person of Mr. Ross, of the two automobiles located there, and in those I found certain information which I had relayed on to San Francisco via radio.

Q. What information do you refer to?

A. The information found on Mr. Ross was contained in a small black notebook indicating words which I relayed in. The words——

Mr. Schnacke: I have the notebook here——

The Witness: Excuse me.

Mr. Schnacke: ——if the witness would care to refer to it, and we have no objection to its being offered in evidence at this time.

Mr. Gladstein: I have no objection to him look-

(Testimony of Roy Erickson.)

ing at the notebook if that will facilitate the testimony.

Mr. Schnacke: (Handing notebook to the witness.)

The Witness: A. The words appear on the third page of the notebook reading "George—" I think the abbreviation "Geo.—27".

Next line: "1. Meet Betty—S. J.—6:00 p.m.", and it is apparently the 13th or 3rd, "and Julian".

Also on the next page, page 4, was a list of numbers headed by the letter "J". The numbers are 7-0394. Home 5-9494, with a "3" in parentheses following that, and the word "out" following that.

The next line: "4-4285" with the word "out" following that.

The next line: "3-4538" with the word "off" following that.

Q. Is there a word in front of the figure 5?

A. Yes, there is a word before the 5. That is the number on the second line. It appears to be the word "use".

Q. Very well. Is that the extent of the information you obtained at the house in Twain Harte?

A. No. In examining the two automobiles, one was a 1950 Ford Sedan, brown or bronze in color, and it had on it a temporary registration, or suspensory sheet, I believe you would call it, reflecting that the car was registered to a Janet Conroy at 69 North 10th Street, San Jose, California.

Q. Anything else?

A. No, sir.

(Testimony of Roy Erickson.)

Q. What was the information you relayed, you say?

A. I relayed that information to our San Francisco office.

Q. Let me ask you this, Mr. Erickson: Have you now told us the extent of the knowledge and information you have acquired concerning Patricia Blau, or any connection between her and the subsequent arrest that was made of her?

A. That is the extent of my personal knowledge, yes.

Q. You were present with other agents in the house, were you not? A. Yes, sir.

Q. Were any of them under your direction?

A. No, sir.

Q. Were you under someone else's direction at the time?

A. I was under the direction of the agent in charge, yes.

Q. Who was that?

A. Mr. William Hannan.

Q. Was he present during the occasion or during the time you are referring to in the house?

A. Yes, he was on the property. I advised him that we had found these things, and he simply directed that they be relayed on into San Francisco.

Q. I am trying to find out from you, Mr. Erickson, if there were any other matters of any kind whatever, to your knowledge, that you or other agents there obtained and transmitted on?

A. There was other comment to the effect that

(Testimony of Roy Erickson.)

another agent found an insurance policy in the house for the automobile which was registered to Janet Conroy.

Q. You don't personally know about that, but you know it came out that there was such a policy?

A. Yes, sir.

Q. That is a policy covering public liability or matters of that kind? A. I presume so.

Q. All right. Anything else?

A. No, sir.

Q. The answer, then, to my last question, covers both the knowledge and information of yourself and the other agents who were there with you on that occasion?

A. At the time of the arrest, yes, sir.

Q. Yes. Now, could you tell me what the time of the day was when you relayed this information on concerning these matters that you have given testimony about?

A. I would say between 2:40 and 3:00 o'clock. That is within twenty minutes after the time the individuals arrested were removed from the property.

Q. So what time of day was that?

A. They were taken from there approximately 20 minutes to 3:00.

Q. And this information that you have told us about, that was transmitted afterwards?

A. That was transmitted as soon as we could get the wheels in motion and remove him to San Francisco, yes.

(Testimony of Roy Erickson.)

Q. And that accounts entirely for the extent of your information about this matter, does it?

A. Yes, sir.

Mr. Gladstein: That is all, your Honor. Oh, just a moment. I am sorry. I have another question.

Q. I am correct, am I not, Mr. Erickson, you did not have nor did any of the agents who were with you at the house have any search warrant for the search of the premises, isn't that correct?

A. No, sir.

Q. When you say "No, sir", that is correct, is it not? A. That is correct, yes, sir.

Mr. Gladstein: That is all, your Honor.

Cross Examination

Mr. Schnacke: Q. Mr. Erickson, after the time of the arrest did you have occasion to check the telephone numbers listed to the address which appeared as the address of Janet Conroy on the automobile that was found at the cabin?

A. It was checked, yes.

Q. And do you know what that telephone number is?

A. That telephone number is Cypress 7-0394.

Q. And does the number "7-0394" correspond with the first number on the page headed by the letter "J"? A. Yes, sir.

Mr. Schnacke: That is all, Mr. Erickson.

(Witness excused.)

Mr. Gladstein: Mr. Shedd, please.

JOHN EDWARD SHEDD

called as a witness on behalf of the defendants, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

The Clerk: Please state your name to the Court.

The Witness: John Edward Shedd.

The Clerk: Please spell your last name.

The Witness: S-h-e-d-d.

Direct Examination

Mr. Gladstein: Q. You are an agent of the Federal Bureau of Investigation, Mr. Shedd?

A. That's right.

Q. And you were in August of last year?

A. Yes, sir.

Q. Did you and other agents take into custody the defendant, Patricia Blau? A. Yes.

Q. Will you tell us at what time of day that was? A. The time of the arrest?

Q. Yes.

A. Approximately 8:25 on the evening of August 27th.

Q. At what time of day did you get directions or instructions to make such an arrest?

A. Approximately 4:00 o'clock on the same afternoon.

Q. And from whom did you receive such direction?

A. From my immediate supervisor.

Q. Who was that?

A. Mr. Clifford—Harry Clifford.

(Testimony of John Edward Shedd.)

Q. Where were those instructions given you?

A. I received them over the radio.

Q. Where were you at the time you received them?

A. On the city limits of San Francisco doing leg work.

Q. Do you know whether the instructions that were given you were relayed from the office in San Francisco or some other place?

A. They were relayed—my instructions came from Control—Control in San Francisco.

Q. Where were you at the time that you received these instructions, approximately?

A. Well, that is what I would have to say—approximately. I would say out on Geneva Avenue or some place like that.

Q. What were the instructions?

A. The instructions were to proceed to the immediate area of 69 North 10th Street, San Jose, and conduct a surveillance, physical surveillance of a person by the name of Patricia Blau.

Q. Was that the name that was used in the instructions, now? A. Yes.

Q. Was there any other information given you that would tend to identify or describe her?

Mr. Schnacke: Your Honor please, I haven't objected up to now, but I think this preliminary information of instructions is immaterial and hearsay, objectionable.

The Court: I will sustain the objection to the last question. I think that is far afield.

(Testimony of John Edward Shedd.)

Mr. Gladstein: Q. Then what did you do, sir?

A. I went to the—I of course immediately proceeded to San Jose and arrived there approximately five or ten minutes past 5:00 that same afternoon.

Q. I am not sure I understand correctly. Did your instructions tell you to conduct a surveillance or to make an arrest at that time?

A. At that time I was told to conduct a surveillance.

Q. All right. And will you tell us what you did thereafter?

A. Shortly after I arrived there I took up a position in the immediate area, and approximately 5:25, the defendant, Patricia Blau, was observed by myself leaving the residence at 69 North 10th Street, San Jose.

Q. Yes, sir. Then tell us what happened thereafter.

A. Well, when she left she was carrying a suitcase and coat over her arm, and she proceeded to walk north on 10th Street.

Q. Pardon me for interrupting. How did you know it was Patricia Blau at that time?

A. Well, prior to this I had observed and was instructed—or I had observed Patricia Blau in Oakland, California, previously in the year, and was told that the woman I had seen on the street here on North 10th Street in San Jose, which was the same woman I had seen in Oakland, was one and the same person.

(Testimony of John Edward Shedd.)

Q. All right, will you proceed?

A. And this defendant proceeded to walk north on 10th Street, and I observed her intermittently between North 10th Street until she finally stopped walking and was standing on the corner of 13th and Julian Street in San Jose. That was approximately 5:45 p.m.

After about fifteen minutes I observed a light green Chevrolet coupe drive up to that corner. I observed the defendant step from the sidewalk to the side of the car. I saw the defendant get into the car and I saw them drive off.

Q. What did you do then?

A. Well, I immediately started to follow the subject, and I watched them take various turns in and around the general area, which lasted for about twenty or twenty five minutes before the automobile headed north on 17th in the direction of Oakland.

The car continued along 17th until it reached Highway 21, where it veered off to the right and headed in a northeasterly direction.

The car continued along that road until it came to Livermore cutoff, and cut off on the way to Livermore, and proceeded as far as Banta cutoff near Tracy.

At about that point the car stopped, and then it made several U-turns and used a very devious means of getting around these back roads out there in an open field.

Q. What do you mean by that, sir?

(Testimony of John Edward Shedd.)

A. Well, the car would drive 200 yards, make a U-turn and come back in the opposite direction, stop, make a U-turn again and go back again in the other direction.

So finally the car proceeded out to Highway 50 again and headed toward Stockton. On the outskirts of Stockton the automobile stopped again and both the defendant and the other occupant got out, stepped into a restaurant there, and sat at a table near the window and proceeded to eat. This was approximately eight o'clock, or ten minutes to eight, I would say. I correct myself. Ten minutes to eight.

Q. Can I interrupt you again? Up to that point you had no instructions to place her under arrest?

A. I had received no instructions but I had been advised by Control of our position, and so forth.

At approximately five minutes past eight or so, both the defendant and her companion came out, got in the car, and proceeded to drive through Stockton, downtown Stockton, and in downtown Stockton they continued to make these U-turns and drive around in circles for about ten minutes before the car headed out on the Modesto Road.

At a point about three or four miles, the car turned over to a—turned to another highway, the Mariposa Road, and headed east on Mariposa Road.

At this point we were following the car and I observed pieces of paper, or what appeared to be paper, white objects, flying from both the left side

(Testimony of John Edward Shedd.)

of the car and the right side of the car, and as I got closer some of it was—when I got up real close to the car, some of it was coming right by our automobile.

As a result, I called Control again and advised them what the situation was, and shortly thereafter I was advised to make the—well, we were advised to make the arrest. So we immediately turned on the siren and lights and proceeded to halt the vehicle.

It was some time before the companion of the defendant observed the sirens of the three cars involved, but the car was finally stopped at the side of the highway approximately twelve miles out on Mariposa Road from Stockton, and at that point the defendant was placed under arrest.

Q. What did you place her under arrest for?

A. The senior agent in charge at that time in the group placed her under arrest for—I heard them say myself just the word “accessory after the fact”, and I could not hear the rest of it because I was on the opposite side of the car and there was, of course, a little confusion at the time.

Q. Who was the senior agent in charge?

A. Mr. Charles Prelsnek.

Q. Of course you were in contact with the Control or central point?

A. Yes, I could hear them and they could hear me.

Q. Who was doing the communicating, you or Mr. Prelsnek?

(Testimony of John Edward Shedd.)

A. Well, it would vary, who was behind the car at the time.

Q. Sometimes you and sometimes he?

A. That is right.

Q. Did you yourself hear the instructions as to whom to arrest and on what charge?

A. Yes.

Q. I mean from the central office.

A. That is right.

Q. And what was that direction?

Mr. Schnacke: I object to that as being incompetent, irrelevant and immaterial, having no bearing.

The Court: I don't think this has any bearing on the matter. It is what was done. Doesn't make any difference what the instructions were.

Mr. Gladstein: Q. You had no warrant of arrest for the occupant of that car?

A. That is right.

Q. The same is true of all of you?

A. That is right.

Q. I take it it is also true none of you had a warrant authorizing a search of the occupants or contents of the vehicle?

A. That is correct.

Q. Now, you mentioned some pieces of paper. Did you ascertain what those were?

A. No. On that type of road and at the speeds that the cars were traveling it would be impossible to recover paper torn in small pieces.

(Testimony of John Edward Shedd.)

Q. You never did make any recovery of them and don't know what they are, is that correct?

A. That is correct.

Q. What happened at the time that you arrested—. By the way, did you arrest one or both of the occupants? A. We arrested one.

Q. And that was the defendant, Patricia Blau?

A. That is correct.

Q. And the other occupant was who?

A. Harvey Wilson Richards.

Q. You did not place him under arrest?

A. What?

Q. I say, you did not place him under arrest?

A. No.

Q. What did you do then at the time of the arrest?

A. Due to the location, we returned to the nearest city, which was Stockton. The companion of the defendant voluntarily returned with us. We drove to the resident agency there in Stockton with both the defendant and the companion, and at that point I stepped out of the picture. I wasn't in charge or anything and I had no further orders at that time, and that was the last time I observed the defendant.

Q. What time of day was that?

A. I could only guess at the time then. I am not sure as to what time that was, but it would be probably some time after nine o'clock in the evening—9:15 or 20.

Q. Prior to that time did the officers conduct a search of the person of the defendant?

(Testimony of John Edward Shedd.)

A. Would you say that again?

Q. Yes. Before you went off duty at nine o'clock did the officers conduct a search of Mrs. Blau?

A. The only search conducted of Mrs. Blau in my presence was the search of a handbag—a pocketbook.

Q. While you were present, then, no search was made of the automobile?

A. No search was made of the automobile at that time, shortly after nine o'clock.

Q. So that any search that may have been done would have occurred after you had gone?

A. No, I hadn't left, but my statement to you was that I did not see the defendant after 9:15.

Q. Oh, I am sorry. Now, were you present when a search of the car was made?

A. Yes, that is correct.

That was some time after you no longer—after the time you last saw the defendant?

A. That is right.

Q. Well, what time was it that the search was conducted?

A. Well, the search was conducted some time prior—about ten o'clock on that evening.

Q. Where had the defendant been taken?

A. I had no knowledge of where the defendant was.

Q. She wasn't released, was she?

A. Well, that is evident.

Q. I mean she had been taken in custody by some agent or agents?

A. That is right.

(Testimony of John Edward Shedd.)

Q. Who conducted the search?

A. Search of——?

Q. The automobile.

A. I conducted the search of the automobile.

Q. Did you ask the defendant for permission to do so? A. No, I didn't.

Q. Or anybody? A. No.

Q. Did you take into your possession any contents were? A. Yes.

Q. Was an inventory made of what the contents were? A. Yes.

Mr. Gladstein: Is that present, Mr. Schnacke? I think we can simply have counsel supply such inventory rather than have the witness try to remember from memory. I am satisfied the inventory would be more accurate, if that is all right with your Honor.

The Court: All right.

Mr. Gladstein: Q. I thought I had asked this question, but at the risk of repetition, it is correct that you had no search warrant to search the car?

A. That is right.

The Court: You said that already.

Mr. Gladstein: That is what I thought.

Q. One more question: Were you told whether or not a warrant for the arrest of Mrs. Blau had been obtained?

Mr. Schnacke: I will object to that as immaterial.

The Court: What did you say?

(Testimony of John Edward Shedd.)

Mr. Schnacke: I think it is immaterial whether this witness was told.

The Court: He said he had no warrant.

Mr. Schwartz: He said he had no warrant, so whether he was told there was a warrant or not doesn't seem to me to be material. I will withdraw the objection, though.

The Witness: Will you give me the question again?

Mr. Gladstein: Q. Yes. You have already told us that you yourself had no warrant to arrest her. I am simply asking you now whether you had been told there had been a warrant made, and if you were told you were to proceed under that authority.

A. I had no personal knowledge whether there was one in effect or not.

The Court: Anything else?

Mr. Gladstein: That is all except for the actual inventory of the contents.

Mr. Schnacke: Well, just a moment. Is there such an inventory?

(Colloquy inaudible to the reporter.)

Mr. Schnacke: There apparently is an inventory, your Honor, and we will attempt to supply it.

The Court: Anything else you want now?

Mr. Schnacke: No further questions.

Mr. Gladstein: That is all.

(Witness excused.)

[Endorsed]: Filed July 13, 1954.

In the United States District Court for the Northern District of California, Southern Division

No. 33740

UNITED STATES OF AMERICA, Plaintiff,
vs.

SHIRLEY KREMEN, also known as LEE KAP-
LAN, et al., Defendants.

REPORTER'S TRANSCRIPT

Monday, April 12, 1954

Before Hon. Louis E. Goodman, Judge.

Appearances: For the Government: United States Attorney, by Robert H. Schnacke, Esq., and Richard H. Foster, Esq., Assistant U. S. Attorneys. For the Defendants: Gladstein, Andersen & Leonard, by Richard Gladstein, Esq., and Norman Leonard, Esq. [1*]

The Clerk: United States of America versus Shirley Kremen, et al., for trial.

The Court: Both sides ready?

Mr. Schnacke: Yes, Your Honor.

Mr. Gladstein: Yes, Your Honor.

(Thereupon a jury was selected and sworn.)

The Court: Mrs. Workman will be alternate juror No. 1 and Mrs. Lilly alternate No. 2.

We will take a recess until 2:30 this afternoon,

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

members of the jury. However, you should bear in mind, please, particularly those of you who haven't had jury service, that now that you have been sworn to try this case it becomes your duty not to discuss the case or anything about it among yourselves, nor are you to let anyone else upon any pretext address you in any manner concerning this case or any phase of it.

Likewise, it is your duty not to form or express any opinion concerning the case until it finally reaches your hands for decision.

Now, when we reassemble at 2:30, you will go to the jury room provided for you. When you leave now the Crier will show you the jury room, and when you assemble for the various sessions of court that is where you will go. Then you will [3] also go there during the several recesses.

The purpose of that is that we do not like to have the jury in the hallways while the case is in progress, and therefore we have provided a jury room where you will be at all times when you are not in court.

We will now take a recess until 2:30.

(Thereupon this cause was adjourned to the hour of 2:30 p.m. this date.) [3-a]

The Clerk: United States versus Kremen, et al., for trial.

The Court: Do you wish to make an opening statement?

Mr. Schnacke: Yes, Your Honor.

(Opening statement by Mr. Schnacke and various motions made by Mr. Gladstein reported but not transcribed at this time.)

Mr. Schnacke: Roy Erickson.

ROY L. ERICKSON

called as a witness on behalf of the Government, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

A. Roy L. Erickson, E-r-i-c-k-s-o-n.

Direct Examination

Mr. Schnacke: Q. What is your occupation, Mr. Erickson?

A. I am a special agent for the Federal Bureau of Investigation, presently assigned to the San Francisco field office.

Q. Was that your occupation on August the 27th, 1953? A. Yes, sir.

Q. In the course of your employment did you have occasion to go to a cabin at Twain Harte, California, on that date? [4] A. Yes.

Q. What time did you arrive at that cabin?

A. I arrived in the area of the cabin about 5:00 a.m.

Q. With respect to visibility, what was the situation at that time?

A. When I entered the cabin area it was still

(Testimony of Roy L. Erickson.)

dark. By the time I was situated dawn was just beginning to break.

Q. Mr. Erickson, at a later time did you return to the area of the Twain Harte cabin and make certain measurements for the purpose of drawing a diagram of that area?

A. Yes, on March 12th, 1954.

Q. Would you identify these papers for me (handing documents to the witness)?

A. These are three sheets of paper which I used to draw three different things in the area where the cabin was located from measurements which I had obtained on my trip there March 12th.

Mr. Schnacke: May the three pages identified by the witness be marked as Government's Exhibit next in order?

The Clerk: As one exhibit, Mr. Schnacke?

Mr. Schnacke: As one exhibit, yes.

The Clerk: Do you wish them marked for identification or entered into evidence, Mr. Schnacke?

Mr. Schnacke: In evidence.

The Clerk: Plaintiff's Exhibit 1 introduced and filed [5] into evidence.)

(Whereupon three sheets of paper identified above were received in evidence and marked Plaintiff's Exhibit No. 1.)

Mr. Schnacke: Q. Now, will you identify that document, please (handing document to the witness)?

A. This consists of three photostatic copies, one

(Testimony of Roy L. Erickson.)

of each of the three charts. However, they have been reduced to half size.

Mr. Schnacke: If Your Honor please, I have enough of the photostatic copies to which the witness has just referred to supply one to each member of the jury. I have supplied one to counsel for the defense and I have one available for Your Honor. It may be of assistance in following the testimony of this witness as to his activities at the cabin and in the cabin area. May a copy of these be given to each member of the jury?

The Court: Any objection?

Mr. Gladstein: I don't have any objection.

(Thereupon photostatic copies of Plaintiff's Exhibit No. 1 were distributed to the jury.)

Mr. Schnacke: Q. The first page of the diagram to which you have referred represents what, Mr. Erickson?

A. The first page represents generally the lot on which the cabin was located. It shows the general—the specific [6] dimensions of the lot there, to my limited ability, the shape of the lot.

It shows the roadway running below the lot, which is at the base of the hill. It shows the entrance driveway from this roadway into the lot on which the cabin was located, and a front roadway on the front terminus of the lot which goes by the area on this side of the hill but does not enter the cabin area as such.

Q. Both above and below the upper road you have labeled “wooded hillside”. Does that wooded

(Testimony of Roy L. Erickson.)

hillside extend to the left and to the right of the place where it is noted?

A. Yes. The land on all sides of the cabin, to the left, to the right and above it, were wooded. The land below it, immediately below it on the property, is wooded; but below what is noted as the "lower road" is a small valley which is not wooded.

Q. Now, you have designated only one cabin or building other than the outhouse building on this diagram. Within the area included by the diagram are there any other buildings?

A. Within the area included by the diagram there was none.

Q. What are the nearest adjacent buildings by direction and distance from the cabin here?

A. The upper road goes to a cabin which would be west or to the right of the diagram as looking at it. There is a cabin probably 100 to 150 feet beyond the end of the roadway, as [7] shown. There is also a small cabin on the lower road west of the property, or to the right of the map, and that again is probably 100 feet or so from the edge of the map.

Q. Are there any other cabins in the immediate vicinity?

A. No, not in the immediate vicinity.

Q. You have testified that on the morning of August 27th, at about five o'clock a.m., you came into this cabin area. By referring to this diagram, into what part of the area did you come?

A. I came into the area above the upper road, or at the top of the chart as depicted. That is a

(Testimony of Roy L. Erickson.)

wooded area with some heavy or large stone, boulders. The trees are reasonably large. They are limited in number, though. And I was in the area immediately above the road and at times on the road itself.

Q. Were you alone on this occasion?

A. No, I was with four other agents.

Q. And where were the four other agents located with respect to yourself?

A. We were stationed as near to each other as we could be without being observed; that is, either behind the next boulder or behind the next tree.

Q. From the place where you were stationed, what parts of the cabin could you observe?

A. From where we were stationed the hill is reasonably high [8] so we were above the cabin as such. We could observe what would be mostly the southwest side of the cabin and the southeast side of the cabin. We could observe the two sides clearly together.

Q. To clarify the designation of the sides, you mean the side nearest the top of the page as the southwest side and the left side of the cabin as the southeast side, is that correct?

A. That is right.

Q. Did you observe the parking and game area, as it is designated here?

A. Yes. As I have noted here, below the cabin is marked "wooded". That is wooded in the sense that there are several trees there. However, like above, they are limited in number.

(Testimony of Roy L. Erickson.)

The cabin itself is in a cleared area which is sort of terraced. The small lines drawn from the left to the right from the entrance driveway, they are supposed to depict a rise in the land or a terrace, and that entire area is cleared and flattened by the terracing. I could observe that entire terraced and cleared area at all times.

Q. And from your location, and after the visibility was sufficiently good, could you observe the outhouse?

A. Yes, the outhouse I could observe at all times.

Q. And could you observe the entrance driveway?

A. Yes. We could look down a good percentage, I would say one third of the way down the driveway itself.

Q. Approximately how far were you from the cabin itself?

A. I would estimate roughly 100 feet.

Q. And how long did you stay in that position?

A. I was in that position from about five o'clock in the morning until immediately after one o'clock. About, my time, about 1:04 p.m.

Q. You were in the area along there above the front road in the portion labeled "wooded hillside", then, from about five o'clock in the morning until about one o'clock in the afternoon?

A. That is right.

Q. And you were accompanied by four other agents during all that time, were you?

A. Yes.

(Testimony of Roy L. Erickson.)

Q. Now, at what hour was the visibility sufficiently good for you to observe the cabin and the adjacent area?

A. Well, shortly after I arrived, I would guess about 5:30 or thereabouts, it was possible to see through the clearing below; but in the wooded area it was around about six o'clock before it was clear enough to see other than reasonably good sized forms such as the size of a person or larger.

Q. Commencing at the time that the visibility was sufficiently good for you to see in the entire area, will you tell us who was the first person that you observed in the vicinity of [10] the cabin?

A. We saw no human activity whatsoever from the cabin proper or in the environs around it until about 9:30 when a man emerged from the entrance of the cabin, which I would say is on the left of the chart or on the west side of the cabin. He emerged from that doorway to the front yard, as I have it marked, or the terraced, cleared area.

Q. That is in the upper left hand part of the cabin where the label is "entrance"?

A. That is right.

Q. Is that man in the courtroom?

A. No, he is not.

Q. Did you later determine who that man was that you saw coming from the door at that time?

A. Yes. That man later——

Mr. Gladstein: Just a moment. I think the question has been answered by the witness saying

(Testimony of Roy L. Erickson.)

“Yes”. I suppose if he wishes to ask him further questions to establish a proper foundation——

The Court: I think I will sustain the objection.

Mr. Schnacke: Q. You did later determine who that man was? A. Yes, sir.

Q. Did you see him later that day?

A. Yes. [11]

Q. Was he identified to you at that time?

A. Yes, sir.

Q. By whom?

A. He was identified to me at that time—. Well, I should say later than that time. At the time of an arrest. I had to my satisfaction identified him as Robert Thompson.

Q. Did he ever acknowledge his identity as Robert Thompson to you?

Mr. Gladstein: Just a moment. I want to move to strike that answer as being a conclusion. No foundation. Non-responsive answer to the question.

The Court: He said to his satisfaction. That is his conclusion. That may go out. You can ask him how he determined who he was.

Mr. Schnacke: Q. On a later occasion did Robert Thompson identify himself as Robert Thompson in your presence? A. Yes.

Q. And when was that?

A. That would be, in my presence, to me, the following morning.

Q. And where was that?

A. That was in Alcatraz Penitentiary.

Q. So the man that you saw coming out of the

(Testimony of Roy L. Erickson.)

entranceway you have described here, on a later occasion identified himself to you as Robert Thompson?

A. Yes, sir. [12]

A. I will show you a color photograph and ask you if you can identify the man in that photograph?

A. Yes, sir. This is the man who on the occasion of the taking of this picture identified himself to me as Robert Thompson.

Q. Is that the man that you saw emerge from the cabin at ten o'clock that morning?

A. At 9:30, yes.

Q. And I will show you a black and white photograph and ask you if you can identify that?

A. This also is a photograph taken of Robert Thompson on the following day when he identified himself to me as such.

Mr. Schnacke: I will ask that the color photograph be received in evidence as Government's Exhibit next in order.

The Clerk: Plaintiff's Exhibit 2 introduced and filed into evidence.

(Whereupon colored photograph referred to above was received in evidence and marked Plaintiff's Exhibit No. 2.)

Mr. Schnacke: And I will ask that the black and white photograph be admitted into evidence as Government's exhibit next in order.

The Clerk: Plaintiff's Exhibit 3 introduced and filed into evidence.

(Testimony of Roy L. Erickson.)

(Whereupon black and white photograph referred [13] to above was received in evidence and marked Plaintiff's Exhibit No. 3.)

Mr. Schnacke: Q. When Robert Thompson came out of the cabin at 9:30 that morning how was he dressed?

A. When he came out at 9:30 he was dressed in a pair of brown pants and a blue or dark blue type of sweater.

Q. What did you observe him to do after he came out of the cabin?

A. He came out of the cabin with a fishing rod, fly rod, and walked over to the approach of the entrance driveway in that cleared area and practiced casting with the rod for about ten minutes, at which time he laid the rod down on a small table which was set in the yard immediately in front of the entrance, and returned to the cabin.

Q. Did you observe him come out of the cabin after that time?

A. Shortly after he came out, about five minutes after, or about 9:45 a.m., a woman came out of the cabin and sat in an armchair which was situated near the entrance that the first person came out of and that this person came out of, and it was situated near the table I previously mentioned. She sat in that chair and appeared to be drawing or writing.

Q. Do you see that woman in the court room?

A. Yes.

Q. And where is she?

(Testimony of Roy L. Erickson.)

A. She is the woman sitting at defense counsel table in the [14] gray suit and black hat.

Mr. Schnacke: Identifying the defendant Shirley Kremen.

Q. And how long did she stay in the yard?

A. She sat in this chair for probably 15 minutes, and returned to the cabin, entering in the same entrance that she emerged from.

Q. And who next did you see in the area?

A. While she was sitting in the chair a man came out dressed in a pair of brown pants and sat on the ground off of the lowest terrace right by the entrance from which he and the other two emerged. He sat there for just a few minutes, and went back in about the same time as Mrs. Kremen went in.

Q. And do you see that man in the courtroom?

A. Yes.

Q. Which of the——

A. That is the man at the end of the counsel table, on the opposite side, in the light gray suit.

Mr. Schnacke: Identifying the defendant Carl Ross. [15]

Q. After Carl Ross came out of the cabin, whom did you next see?

A. The next person was again Mrs. Kremen, who emerged about a quarter after ten, and at that time she came out carrying clothing, apparently washed clothing, which she hung on a clothes-line stretched from the corner of the cabin nearest the entrance from which everyone had emerged to

(Testimony of Roy L. Erickson.)

what I have marked as the outhouse. The clothing was hung on that line and she immediately returned to the cabin.

Q. Did you observe what kind of clothing it was, as to whether it was man's clothing or women's clothing?

A. It was man's clothing, and a dish towel or some type of a towel.

Q. After 10:15 whom did you next observe at the cabin?

A. About 10:30 another man came out of the cabin and he just walked around the yard shortly, for a short time, and returned. He used the same entrance as the others had used, and he was dressed in only a pair of yellow swimming trunks or shorts of that nature.

Q. Do you see that man in the courtroom?

A. Yes.

Q. Which man in the courtroom is he?

A. That is the man at the counsel table, the opposite side from me, in the middle with the brown suit and the glasses.

Q. Identifying the defendant Coleman? [16]

A. Yes.

Q. After the defendant Coleman came out of the cabin, whom did you next see?

A. They were walking in and out of the cabin from then on several times, all four of those individuals. I did not keep an accurate record of their exits and entrances.

The next person that came out came out about

(Testimony of Roy L. Erickson.)

noon, twelve o'clock. That is, a person other than I had already seen emerge from the cabin, and he emerged from the same entrance that the others had been using.

Q. What time was that?

A. That was just about noon, twelve o'clock.

Q. Prior to the emergence of this new party at twelve o'clock, what had been the general nature of the activity of the other persons that you had seen other than as you have already identified them?

A. They came out as I would say people would normally come out of a place and talk among each other, relax on their various terraces or in chairs. There was another chair, a straight back chair of the type I am sitting on, which was also on that side of the cabin on the terrace.

Q. Then at noon you saw another person come out. Do you see that person in the courtroom?

A. Yes, that is the person on the opposite side of the counsel table, in the blue suit and the gray sweater. [17]

Q. Identifying the defendant Sidney Steinberg?

A. Yes.

Q. How was Sidney Steinberg dressed on that occasion?

A. When he came out he was dressed in a pair of pants only, a brown type of pants, khaki style, I think.

Q. Mr. *Harrison*, I will ask you if you can identify the photograph I am showing you now.

A. Yes, sir, this is a photograph of Mr. Stein-

(Testimony of Roy L. Erickson.)

berg that I took of him in the cabin at the time of the arrest on that day, August 27th.

Mr. Schnacke: I will ask that the photograph of the defendant Steinberg be marked next in order.

(Whereupon the photograph of Sidney Steinberg was received in evidence and marked Defendant's Exhibit No. 4.)

Mr. Schnacke: Q. In that photograph is the defendant Steinberg dressed as he was on the first occasion and that you saw him on August 27th?

A. Yes, sir.

Q. When Steinberg came out of the cabin what did he do?

A. Mr. Steinberg came out of the cabin and he pulled a chair up to the table I have mentioned as being near the entrance. He came out of the same entrance as the rest, and he sat at the table, apparently writing or drawing. He sat there for a considerable time, 15 to 20 minutes, during which time others [18] were outside or entered or left the cabin on the cleared area. After the 15 or 20 minutes or about a quarter to 20 minutes after twelve he got up and went back into the house.

Q. All of them returned to the house?

A. All of them at various times returned to the house, yes, sir. None of them ever left the property as such.

Q. Calling your attention to about five minutes after one on that day, who was present in your yard at that time?

A. Do you say about five minutes after one?

(Testimony of Roy L. Erickson.)

Q. Yes.

A. About five minutes after one, Mr. Thompson, Mr. Steinberg were together in the yard. Immediately before that time all five of those I had seen come from the cabin were sitting in the yard around the table. What they were doing I don't know, other than they appeared to be talking.

Q. Then all of them other than Thompson and Steinberg returned to the house?

A. The other three returned to the house just before 1:05, yes.

Q. At about 1:05 did you get instructions from your superior?

A. Yes. Earlier than that, actually about 12:45.

Q. Pursuant to those instructions what did you do?

A. Pursuant to those instructions I had been relaying the information that we were observing to an agent in charge of the operation. Those instructions were relayed by means of a [19] two-way radio, which is called a handi-talkie. We had been observing the people through binoculars and relaying the details as we observed them. About 12:30 we relayed the information that, to our satisfaction, two of the individuals were people we were satisfied as fugitives. We had relayed the information about the others coming in and out and so forth.

About 12:45 we received instructions to stand by, not to move, but to be prepared to assist approaching party, which was approaching by automobile. We were told that there would be an arrest effected,

(Testimony of Roy L. Erickson.)

that we would have to take the two who were there that we were satisfied were fugitives in our minds. We were told that we should also be prepared and that we would effect an arrest of all the parties there, since it was apparent from what we had reported——

Mr. Gladstein: I am going to object to this as a conclusion.

The Court: Yes, the statement, "Since it was apparent", from that point may go out.

Q. (By Mr. Schnacke): In any event, about 12:45 you received certain instructions and thereafter you took certain action, did you not?

A. Yes.

Q. What action did you take?

A. At the time automobiles could be seen coming in the [20] entrance driveway we were instructed to leave our cover positions on the upper road and on the wooded hillside and move down to the cleared area and assist in effecting the arrest of the people of the cabin.

Q. Did you do that? A. Yes, sir.

Q. About what time of day was it that you converged on the cabin?

A. According to my time it was 1:04.

Mr. Schnacke: Is this a convenient time to adjourn?

The Court: All right. I think perhaps we might adjourn until tomorrow morning. You can step down.

Members of the jury, I have some motions, legal

(Testimony of Roy L. Erickson.)

matters to dispose of with the attorneys tomorrow morning earlier. So you need not come at the usual time of ten o'clock but instead we will resume the trial so far as the jury is concerned at 10:30 in the morning. So please return here tomorrow morning at 10:30 and in the meantime bear in mind the admonition I have given you.

The Court will recess until 9:30 tomorrow morning.

Will you see that you get all 12 of those diagrams from the jury and return them to the Clerk?

(Whereupon an adjournment was taken until

9:30 a.m. Tuesday, April 13, 1954.) [21]

The Clerk: United States vs. Kremen, et al, motion to return seized property and motion to suppress evidence, further hearing.

Mr. Schnacke: If your Honor please, the Government has agreed with the attorney for the defendants that we would provide the witnesses who were acquainted with the facts surrounding and leading to the arrest of the defendant Patricia Blau.

There were two witnesses who have information bearing upon that point, one of them having information concerning matters at the Twain Harte cabin which were preliminary matters leading to the arrest. That agent is Roy Erickson. The other agent, who participated in and was present at the arrest, is the Agent Shedd. Both of those agents are present in court for the convenience of the defendant.

(Testimony of Roy L. Erickson.)

(Further proceedings upon motions reported but not made a part of this transcript, upon instructions of counsel.)

(Recess.)

ROY L. ERICKSON

resumed the stand as a witness on behalf of the Government, and having been previously duly sworn, testified further as follows: [23]

Direct Examination—(Continued)

Mr. *Erickson*: Q. Mr. Erickson, when we left yesterday you had reached the time of about 1:05 p.m., and as I recall it you were on the hill, had received instructions to converge on the cabin, and you observed automobiles approaching the cabin through the driveway, is that correct?

A. Yes.

Q. And that was, then, at approximately 1:04 p.m., on August 27th, is that right?

A. Approximately, yes.

Q. Now, will you tell us what you did from that time on in connection with these defendants?

A. As I observed the automobiles coming up the driveway, I dropped what I was carrying, namely, the handi-talkie, and I came down the hillside, the wooded area, to the parking area, which is on the map.

Just as I came down over and dropped into the parking area, the first automobile came into the area from the driveway. Immediately, the agent in

(Testimony of Roy L. Erickson.)

charge jumped out of the automobile, issued the command to everyone present that we were agents of the F.B.I., and that those on the premises were under arrest.

At the time two of them, Mr. Thompson and Mr. Steinberg, were standing in the parking area or cleared area in front of the house. The other three were inside the house and were immediately removed to the outside. [24]

Then, after they were removed to the outside, individual agents examined—they assumed charge of the prisoners independently. I personally assumed charge of Mr. Rasi who emerged from the entrance where, as I spoke of yesterday, the people were entering and leaving. I asked him to face the building and raise his hands up against the walls of the building. I immediately, so-called frisked him. I removed from his pockets the contents, and then I placed handcuffs on his hands with his hands to the front.

At the completion of that I asked him to rest easy, stand easy, or sit wherever he wanted until the other details were taken care of.

When all of the people had thus submitted to arrest, the agent in charge made the announcement to them, which is the usual announcement by a police officer, that the people were being placed under arrest. He announced that there were warrants for Mr. Thompson and Mr. Steinberg, and he announced that we would have to hold the rest on charges of harboring.

(Testimony of Roy L. Erickson.)

Q. You stated that you conducted an examination or search of the defendant Carl Rasi?

A. That's right.

Q. And what did you find on his person?

A. Very little. There were——

Mr. Gladstein: (Interposing) Just a second. I note an exception, if Your Honor please, on the ground that the search [25] and any seizure thereafter was illegal and improper, and therefore I make the objection to the question.

The Court: Overruled.

The Witness: There were a few papers in his pocket and a small notebook.

Mr. Schnacke: Q. How was he dressed at that time?

A. At that time he was dressed in only a pair of trousers. I believe they were brown trousers.

Q. I will show you a notebook and ask you if you can identify that notebook? A. Yes.

Mr. Gladstein: Excuse me. May I have a running objection to this line of inquiry, if Your Honor please, upon the ground stated?

The Court: You mean—. This is from the defendant Rasi?

The Witness: Yes.

The Court: Same ruling.

The Witness: A. Yes. This is the notebook I took from the pockets of Mr. Ross.

Mr. Schnacke: I will ask that this notebook be introduced in evidence as Government's exhibit next in order.

(Testimony of Roy L. Erickson.)

Mr. Gladstein: I object for the same reason, Your Honor please.

The Court: Same ruling. [26]

The Clerk: Plaintiff's Exhibit 5 introduced and filed into evidence.

(Whereupon small notebook referred to above was admitted into evidence as Government's Exhibit No. 5.)

Mr. Schnacke: Q. I will show you a sheet of paper and ask you if you can identify that sheet of paper?

A. This also is a sheet of paper I took from the pocket of Mr. Rasi.

Mr. Schnacke: I will ask that the sheet of paper just identified by the witness be introduced in evidence as Government's exhibit next in order.

Mr. Gladstein: Same objection.

The Court: Well, what is the objection? Only on the ground of the search—unlawful search? I haven't seen it. What is the material?

(Document handed to the Court.)

The Court: Oh.

Mr. Gladstein: I will add, concerning my objection, the objection as to the incompetency, irrelevancy and immateriality, if the Court please.

The Court: I will overrule the objection.

The Clerk: Government's Exhibit 6 introduced and filed into evidence.

(Whereupon the sheet of paper referred to above admitted into evidence as Government's Exhibit No. 6.) [27]

(Testimony of Roy L. Erickson.)

Mr. Leonard: In addition to the objection by Mr. Gladstein, Your Honor, may the record show at this time we move to suppress Exhibits 5 and 6 on the grounds that they were illegally obtained from the defendant. May that motion be deemed made?

The Court: It may be deemed made and denied.

Mr. Schnacke: Q. I will show you a sheet of paper with envelope attached and ask if you can identify those documents?

A. These were also taken from the pocket from Carl Rasi, with the sheet of paper being in the envelope at the time.

Mr. Schnacke: I will ask that the documents identified by the witness be introduced in evidence as Government's exhibit next.

Mr. Leonard: We make the same objection, Your Honor, and renew our motion to suppress as to Exhibit 7.

The Court: It may be admitted. Objection overruled.

The Clerk: Plaintiff's Exhibit 7 entered into evidence.

(Whereupon sheet of paper with envelope attached was admitted into evidence and marked Government's Exhibit No. 7.)

Mr. Schnacke: If Your Honor please, may the exhibits just introduced as taken from the defendant Carl Ross be exhibited to the jury at this time?

The Court: Well, can't you read them?

Mr. Schnacke: Yes, I can.

(Testimony of Roy L. Erickson.)

The Court: Unless you want to display the physical [28] connection and want to hold them up, I don't see it is necessary taking up time passing each one around and having each juror read each one separately.

Mr. Schnacke: All right. The first document introduced is Government's Exhibit 5, a little black notebook with a number of pages throughout the book. I will read all of the material that appears in the notebook, insofar as I can read it. Some of it——

Would it be proper, Your Honor, for the witness to read it? I think the witness is better able to decipher some of the language than I am.

The Court: I am not prohibiting you from exhibiting the book if it becomes necessary, but if you take a writing that requires reading by the jury and pass it along, it takes a very long time.

Mr. Schnacke: Yes, I appreciate it does.

The Court: Counsel on either side can simply call attention to what they wish.

Mr. Schnacke: Q. Will you read the contents of the notebook to the jury, please.

A. Page 1 appears to read, line 1, "With Geo."—— apparently abbreviation for "George." "8/10," or August 10, I assume.

The next line reads, "1) Williams Cab."

The next line: "From 3rd to 8."

Next line: —I don't know what the first word would be. [29] The second——

(Testimony of Roy L. Erickson.)

Mr. Schnacke: Q. Would the first word be "Weber?"

A. Maybe "Weber is Vaugn." And the next line: "Da Pazton (woman)."

"2) Other—O.K."

Next line: "3) See Geo—18th."

Next: "Tues—12:00."

Mr. Schnacke: Q. Seems to be "Tuesday" abbreviated and the number abbreviation for "12:00 o'clock," is that right?

A. Probably. Next line: "San Mateo."

Next line: "S.E. corner."

Next line: "5th—(Park)."

In the corner are my initials and the date that I took the evidence.

The Court: Are there many pages of this?

Mr. Schnacke: No, Your Honor. There are about eight or ten pages is all. The significance of the book lies only in two pages. Now, if there is no objection we can read those two pages and mark those in red, and may leave the balance of the book unread.

The Court: You can call attention to anything you want at this time and Mr. Gladstein, if you want to call attention to anything, you can do so.

Mr. Schnacke: Q. Will you read page 4 of the book, Mr. Erickson? Is that the page headed "George—27th?" [30]

A. Page 4, first line, "George" abbreviated, "27th."

Next line: "1) Meet Betty—SJ."

(Testimony of Roy L. Erickson.)

Next line: "6PM" and either "13th" or "3th."
The "M" and the "1" appear to be run together.
"& Julian."

Q. Would you read the next page?

A. The next page, page 5, first line: "J."

Second line, numerals "7-0394—home."

Next line appears to read, "Use 5-9494(3) out."

Next line: "4-4285 out."

Next line: "3-4538—off."

Q. Now, would you read the page captioned
"Public Library" or "Pub. Lib," which appears to
be page 11.

A. That page reads: "Pub Lib"—public library
abbreviated.

"8 PM." The next line reads: "October 17-24-31."

Next line, abbreviation for November "7-14."

The next line——

Q. Would that be "Novek?"

A. It seems to be. I would presume it is
"N-o-v-c-p," meaning "November copy—Newsweek."

The next line is apparently, "They—New Yorker."

The next line: "Do you mean—" I believe.

The next line: "Steve Novak."

Next line: "Yes. You must be Miller."

"Miller" is on the following line.

Q. Would you read—just a moment. [31]

Mr. Schnacke: Government's Exhibit 6 appears
to be a grocery list. I can read that, I think.

"Five dozen eggs. 10 pounds—" No, I can't read
it.

Can I see the original of No. 6?

(Testimony of Roy L. Erickson.)

"Five dozen eggs. 10 pounds of—" something indecipherable. "Five pounds onions. Garlic. Carrots. One-half ham butt, 8-9. 5 pounds boneless chuck. 2 pounds margine," and in the margin, "cheese, salami, liverwurst."

To the right there is, "oil, vegetables (canned), juice, fruit, 4 pounds coffee, tea, 2 pounds Bisquick, 3 milk, 2 buttermilk, chicken."

And in the lower right-hand corner there are Mr. Erickson's initials.

Government's Exhibit 7, as taken from the defendant Rasi, reads as follows:

"Dear Jim:

"8/24

"Enclosed is note to my Betty. In open envelope is some material which have written. If you care to read and comment, you are welcome. Please seal before you send off.

"The person on this end of arrangement is being instructed to break off with your lady until he makes certain other arrangements. As previously agreed, contact from your end to be [32] with S, with whom we are in contact. S will explain further and make necessary further arrangements.

"Regards,

"Jess,"

and in the lower right-hand corner is annexed Mr. Erickson's initials and the date August 27, 1952.

Mr. Schnacke: Q. Following your search of Mr. Carl Ross, what did you thereafter do?

(Testimony of Roy L. Erickson.)

A. Following my search of Mr. Ross, I then assisted in fingerprinting each of the prisoners and checking the fingerprints of Mr. Thompson and Mr. Steinberg with a copy, which is on what we call an identification order, that commonly seen in Post Offices and bulletin boards, and so forth, with people for whom we are——

Q. Well, without regard to that, what did you specifically, in connection with the defendants or in connection with Robert Thompson, do?

A. With Robert Thompson I check his fingerprints, that is all.

Q. I see. What did you do thereafter?

A. Then after checking the fingerprints of Mr. Steinberg, I photographed each of the defendants.

Q. And what was the next thing you did in connection with the defendants or the cabin?

A. Then I went into the house in order to see what there was relating to this matter. I entered the house at the entrance [33] the people had been using. I entered what would be the kitchen on the chart.

Q. Well, let's stop there for just a moment. The second and third pages of Government's Exhibit 1 represent a diagram that you have made of the interior of the cabin at which the arrests occurred, is that right?

A. Yes, sir.

Q. And the ladies and gentlemen of the jury have copies of those diagrams before them. The second page appears to be labeled "First floor" and the third page to be labeled "Second floor."

(Testimony of Roy L. Erickson.)

A. That's right.

Q. With regard to that diagram, as necessary to explain your testimony, will you tell us what you did after you entered the house?

A. I went through the utility room into the kitchen. I noticed the two stoves with food on them, food on the cabinet above the sink, food in the refrigerator—the normal type of food, bacon, eggs, milk, and so forth.

From there I went into the next room, which apparently would be a dinette or something of that type, where there was a table and chairs. In the corner was a cupboard containing dishes. On the table were two boxes, one large box and one smaller box.

The larger box—both boxes were open. The larger box [34] contained a mimeograph machine, the model and make of which was a Print-o-matic, and in the other box were stencil copies and paper for use on the mimeograph machine, along with the necessary ink.

There was also clothing on the chair. Along the wall there was some fishing equipment.

I then went into the living room. I noted the items of furniture which are shown on the chart: Chair, radio, davenport, and a television set. There were also minor things like a footstool and end table. There was a music rack in the corner near the radio.

I noticed there were clothes on most of the items. There was also some clothes on the floor. There was

(Testimony of Roy L. Erickson.)

under the desk a portable—Royal portable type-writer. In the desk were many volumes of phonograph records. There were also many papers.

From there I went on up the stairway to the second floor. That is shown on the third page of the chart.

At the head of the stairway was a closet. It was well filled with clothing. There was a box, paper box on the floor of the closet. It contained a considerable number of papers of various types. I thumbed through the papers.

Then I went into the bedroom, which would be the bedroom above the living room, or at the head of the chart.

Those closets contained clothes, principally men's clothes. [35] They contained several types of suitcases—army bags. There was also one suitcase in the closet with several documents in it and papers.

At the foot of the bed were three cardboard boxes, all containing papers which I looked through. On the bed was a brief case, an expansion type brief case. It was quite filled with papers and documents.

Also, there was a suitcase, a brown suitcase, on the bed, and it too contained documents. There was clothing a few items, on the bed.

On the dresser was a smaller cardboard box containing several documents. On top of it was a small zipper type brief case containing papers and documents. And just lying on top of the dresser was a pair of keys on one ring.

I crossed over into the other bedroom, which

(Testimony of Roy L. Erickson.)

would be above the kitchen side of the house, and this was the smaller one of the two. That contained clothing in the closet. It appeared to be essentially lady's clothing.

There was clothing also on the bed, and there were toilet articles on the dresser. Below the dresser was a standard model typewriter rather than a portable—Remington typewriter.

I then went back downstairs and went out through the porch entry, noting the porch entry had, on the porch were—I think there were four sleeping-bags, or sleeping mattresses and bags. [36]

I went down the stairway and walked over to the parking area where the two automobiles were. One automobile was a green, light green Chevrolet. I looked in the glove compartment quickly to see if there was anything of importance there.

There were some identifying documents showing the car registration at apparently the present time, and an earlier registration.

At the end of the parking area, near the outhouse, was a 1950 bronze-colored Ford. I looked in the glove compartment of that, also, and there were a couple of papers and a temporary or suspense receipt as registration.

Mr. Leonard: If Your Honor please, before counsel puts the next question, may I move to strike that last answer of the witness on the ground that there has been no showing that there has been any process issued for the rambling search which the wit-

(Testimony of Roy L. Erickson.)

ness just described he undertook. I move to strike on that ground.

The Court: The motion will be denied.

Mr. Schnacke: Q. After examining the automobiles, what did you then do?

A. I went over to the agent in charge and pointed out to him the general things I had observed. Principally mentioned the documents in these various boxes and suitcases. I told him that they appeared to involve considerable——

Mr. Gladstein: Just a moment. I am going to object to [37] that as hearsay.

The Court: Sustained. All he can testify is just what he did, not what he said he did.

Mr. Schnacke: Q. After making your report to your superior, what did you then do?

A. Following that, I was then instructed to prepare to take that material back with me to San Francisco.

Q. And pursuant to those instructions, what did you do?

A. I placed the boxes and suitcases and the material from the two cars in an automobile that was provided for me and went back to San Francisco with them.

Q. Prior to the time you returned to San Francisco did you hear any conversation between the special agent in charge or any of the other agents on the premises and the defendant, or any of them, with respect to the property in the cabin?

A. The agent in charge——

(Testimony of Roy L. Erickson.)

Mr. Gladstein: Just a moment. I think that can be answered with "yes" or "no," if Your Honor please.

Mr. Schnacke: Q. I asked if you heard any such conversation? A. Yes.

Q. And between whom was that conversation?

A. That was an announcement by the agent in charge to those we had held as prisoners.

Q. Would that represent all of the defendants with the [38] exception of the defendant Blau?

A. Yes, sir.

Q. And also Robert Thompson?

A. Yes, sir.

Q. And what was the announcement that the special agent in charge made?

A. The announcement was that we were concerned with the material in the cabin. He asked if any of the defendants would identify any of that which was theirs and gave them a chance to answer. They all at that time stood mute.

He then explained to them that they would be taken into San Francisco. It would be a ride of somewhere around five hours. Since they were dressed mostly in jist, the men in a pair of trousers and no uppers on, he suggested they may want to get in more comfortable clothes because they would be taken immediately to the United States Commissioner.

He pointed out to them that up until that moment it was their privilege to say nothing. He asked them again if they would identify anything there, or

(Testimony of Roy L. Erickson.)

specify anything they wanted us to take care of. At no time did any of them tell him what was theirs.

Q. In any event, irresponsive at, or at the time that announcement was made, you were in the presence of the special agent in charge and the five persons that had been arrested?

A. Yes, we were all grouped there. [39]

Q. Were you in a position to hear if any reply had been made? A. Yes.

Q. And you heard no reply at that time?

A. No, sir.

Q. What did you do? You said you had instructions in connection with the property that was obtained on the premises. What did you do in connection with that property?

A. As soon as the prisoners were removed there and an automobile could be brought in——

Q. About what time of day was that. [40]

A. They departed about 20 minutes to three. And we immediately brought in an automobile, placed the boxes and suitcases containing the documents into the automobile, along with the material from the two cars, and drove to San Francisco with it.

Q. I show you a document and ask you if you can identify that document?

A. This is one of the registration forms that was in the glove compartment of the Chevrolet.

Mr. Schnacke: I will ask that that document be

(Testimony of Roy L. Erickson.)

received in evidence as Government's Exhibit next in order.

Mr. Leonard: We object to it for the reasons heretofore stated, and move to suppress it on the ground it was illegally seized.

The Court: Overruled. It may be admitted.

The Clerk: Plaintiff's Exhibit 8 admitted and filed in evidence.

(Thereupon document referred to above was received in evidence and marked Plaintiff's Exhibit No. 8.)

Mr. Schnacke: Q. I will show you three documents clipped together, and ask you if you can identify those documents?

A. Yes. They were—these are three documents found in the glove compartment of the Ford. [41]

Mr. Schnacke: I will ask that they be received in evidence as Government's Exhibit next in order.

Mr. Leonard: We make the same objection, Your Honor, and move to suppress upon the same ground.

The Court: Overruled. It may be admitted.

The Clerk: Plaintiff's Exhibit 9 introduced and filed in evidence.

(Thereupon three documents referred to above were received in evidence and marked Plaintiff's Exhibit No. 9.)

Mr. Schnacke: Q. I will show you a document enclosed in a cellophane container and ask you if you can identify that document?

A. This was also in the glove compartment of the Ford.

(Testimony of Roy L. Erickson.)

Mr. Schnacke: I will ask that that document just identified by the witness be received in evidence as Government's Exhibit next in order.

Mr. Leonard: Same objection, Your Honor, and same motion to suppress.

The Court: Same ruling.

The Clerk: Plaintiff's Exhibit 10 admitted and filed in evidence.

(Thereupon document in cellophane container was received in evidence and marked Plaintiff's Exhibit No. 10.) [42]

Mr. Schnacke: Q. I show you a small yellow piece of paper and ask you if you can identify that document?

A. This was also in the glove compartment of the Ford.

Mr. Schnacke: I will ask that the document just identified be received in evidence as Government's Exhibit next in order.

Mr. Leonard: Same objection, same motion to strike. And I might also point out in connection with the documents, there is no showing of any connection with any of the defendants, and it is incompetent, in addition to the grounds we have urged upon the Court.

The Court: Well, I will overrule the objection. I don't know what the weight of the testimony is at this time.

The Clerk: Plaintiff's Exhibit 11 admitted and filed in evidence.

Mr. Gladstein: Excuse me, Your Honor?

(Testimony of Roy L. Erickson.)

The Court: I say, I am simply admitting the document in evidence. I don't know what the weight of it is.

(Thereupon yellow piece of paper referred to above was received in evidence and marked Plaintiff's Exhibit No. 11.)

Mr. Schnacke: Q. I will show you a photostat of a document and ask you if you have ever seen the original of that photostat? A. Yes.

Mr. Schnacke: May the photostatic copy be marked [43] Government's Exhibit for identification and bear the number next in order?

The Clerk: Plaintiff's Exhibit 12 marked for identification.

(Thereupon photostat referred to was marked Plaintiff's Exhibit No. 12 for identification.)

Mr. Schnacke: Q. Mr. Erickson, do you know where the original of that document is, or do you know—did you ever have in your possession the original of that document? A. Yes, sir.

Q. And what was done with the original of that document?

A. I returned that to one of the attorneys for the defendants with the automobile.

Q. So that the original of that document is no longer in the possession of the Government, is that correct? A. Yes, sir.

Q. Now, where did you first see the original of that document?

A. It was on the window of the Ford.

Q. Of the Ford automobile seen at the cabin?

(Testimony of Roy L. Erickson.)

A. Yes, sir.

Mr. Schnacke: I will ask that Government's Exhibit 12 for identification, be received in evidence at this time.

Mr. Gladstein: Same objection, Your Honor.

The Court: Same ruling. Admitted. [44]

The Clerk: Plaintiff's Exhibit 12 admitted into evidence.

(Thereupon document previously marked Plaintiff's Exhibit No. 12 for identification was received into evidence.)

Mr. Gladstein: I meant to add the same motion to suppress, Your Honor.

Mr. Schnacke: May this be marked for identification, to bear the next number?

The Clerk: Plaintiff's Exhibit 13 marked for identification.

(Thereupon document referred to was marked Plaintiff's Exhibit No. 13 for identification.)

Mr. Schnacke: Q. I will show you Plaintiff's Exhibit 13 for identification, and ask you if you have ever seen the original of that document?

A. Yes, sir.

Q. And where did you first see the original of that document?

A. In the glove compartment of the Chevrolet, at the cabin in Twain Harte.

Q. Did you take possession of the original of that document? A. Yes, sir.

Q. And what did you do with it?

(Testimony of Roy L. Erickson.)

A. I returned that with the automobile to one of the attorneys for the defendants. [45]

Q. So that the original of that document is no longer in the possession of the Government, but has been returned to the defendants, is that correct?

A. Yes, sir.

Mr. Schnacke: I will ask that Government's Exhibit No. 13, for identification, be received in evidence.

Mr. Gladstein: Same objection and same motion, if Your Honor please.

The Court: It may be admitted.

The Clerk: Plaintiff's Exhibit 13 admitted in evidence.

(Thereupon document previously marked Plaintiff's Exhibit No. 13 for identification was received in evidence.)

Mr. Schnacke: Could I have Exhibits 8 to 13, please?

May I at this time read to the jury, Your Honor, the exhibits just introduced by the Government?

Government's Exhibit 8 is a State of California 1952 registration.

"Year 1952. Car registration, Anna May Shepard, 2201 Derby Street."

There is engine number. It describes the make of the car as Chevrolet. Six cylinders, Two-door coupe. The date issued is June 4th.

"First sold 7/50. Class AK."

And there is a tab number. "Year model, 1950." There is a [46] code number, and the automobile

(Testimony of Roy L. Erickson.)

license number appears to be 7B86733. And the fees paid appear to be \$1.00.

Signature of Anna May Sheppard on that document, and the usual material on the reverse side.

Government's Exhibit 9, Mr. Erickson said he found in the 1950 Ford.

First there is a little notation, a slip of paper reading "Indiana Lumberman's 5/10/5—\$500 MP."

Under that "Nathan Citron, Agent. San Jose, \$65."

Under that, "San Jose Ford Sales Company," a bill form. "375 South Market Street, San Jose," with a telephone number, and date August 6th, 1953.

"Sold to Janet Conroy. Address, 69 North Tenth Street."

Various columns. Under "Articles" it reads, "Cash \$200". The numbers are written across it, "3G1606," and under that it says, "a/c 113".

In the lower left-hand corner it reads "Olsen", and in the lower right-hand corner it reads, "\$200," and it bears Mr. Erickson's initials and a date.

The third document in that exhibit, the caption is "Retail Buyers Order and Invoice, San Jose Ford Sales Company, 375 South Market Street, San Jose, California. Salesman, W. J. Olsen. Date, August 6th, 1953. Purchaser, Janet Conroy. Address, 69 North Tenth Street, San Jose." [47]

"Enter my order for one 1950 Ford V-8, Custom Club Coupe, color bronze."

There is a rubber stamp "Guarantee" written across it.

(Testimony of Roy L. Erickson.)

The "cash delivered price" is shown to be \$1,125. There is a notation, "replace timing gear". The total is shown to be \$1,125, sales tax \$39.38, license or license transfer \$1.00, or a total price of \$1,165.38.

There is a deposit of \$200. "No trade".

"Cash on delivery \$965.38. Total down payment \$1,165.38. Insurance \$65. Total \$1,230.38."

Bears the signature "Janet Conroy", plus other printing on the form that does not appear to be material.

On the reverse of that there are certain writings in pencil that appear to have no meaning to me. I can read them. Looks like, "M. H. O. R. H., 156413, body BH 72 B, GB2L14303."

Then there appears to be a subtraction of 965 from the \$1,000, leaving \$35, and under that the number "34".

Government's Exhibit 10 is a policy of holder's identification: "Indiana Lumbermen's Mutual Insurance Company. Insured, Janet Conroy. Address, San Jose, California. Auto name, Ford. Motor number HORH 156413," which I think is the same that was on the reverse of that last page.

"Expires August 7, 1954." There is a space for signature, but no signature appears. And the policy number is "5565769." It recites that, "This card identifies the bearer and [48] authorizes acceptance collect—" well, identifies the policy holder.

On the reverse of it there are instructions in case of accident: Name of the insurance company, and on the cellophane folder in which it is attached is

(Testimony of Roy L. Erickson.)

the name "Nathan J. Citron, insure today, be sure tomorrow, 93 East San Antonio, San Jose, California," and a telephone number.

Government's Exhibit 13 is a registration certificate covering a 1950 Chevrolet, two-door coupe. The engine number is HAA786026. License number 7B86733. There is registration to Gilbert G. Byrne, 169 Inner Circle, Redwood City. License transfer fee of \$1.00, and signature of Gilbert G. Byrne on the reverse side. The usual printed material contained on a registration certificate.

Government's Exhibit 12 is a document that reads on the reverse "Temporary permit. Attach to lower right-hand corner of windshield."

On the face of it it says, "Suspense receipt, State of California, Department of Motor Vehicles, Division of Registration."

It appears to bear the seal of the State of California. A number in the upper right-hand corner. Covers a Ford 8 engine BORH156413, and shows the registered owner as "Janet Conroy, address 69 North Tenth Street, San Jose." License number 3G1606. Year 1953. State of California check mark and [49] a column saying CK.

There are three places, "cash, check, money order", and the "check" is checked.

"Remarks Bu. No. 8." In the lower left-hand corner is a cashier's certificate with the initials "J. M." and the name appears to be indecipherable. "Number 09. San Jose 016," and the date typed in,

(Testimony of Roy L. Erickson.)

"8/13/53," and also bears Mr. Erickson's initials and the date.

Government's Exhibit 11 is a little sheet of yellow paper: "The car is in the parking lot down the street. Use it as much as you like but be careful," and the "be careful" is underlined.

"Good luck, Janet". It bears Mr. Erickson's initials and the date.

Is this a convenient time to adjourn, Your Honor?

The Court: Do you have other documents to identify?

Mr. Schnacke: Yes, Your Honor, there will be considerable more.

The Court: Well, we will meet again at 2 o'clock, members of the jury. Please return at 2 o'clock and bear in mind the admonition of the Court.

(Thereupon this cause was recessed to the hour of 2 o'clock p.m. this date.) [50]

ROY L. ERICKSON

resumed the stand as a witness on behalf of the Government, and having been previously duly sworn, testified further as follows:

Direct Examination—(Continued)

Mr. Schnacke: Q. Mr. Erickson, on August 27th of last year, on the day of the arrest about which we have been speaking, did you have occasion to photograph the cabin and the surrounding area?

A. Yes, sir.

(Testimony of Roy L. Erickson.)

Q. I will show you five photographs and ask if you can identify those photographs?

A. Yes, these are five photographs I took of the area outside of the cabin.

Mr. Schnacke: I will ask that the five photographs be introduced in evidence as Government's Exhibit next in order. May each of the photographs be separately numbered? I think that is as convenient as sub-lettering them.

(Whereupon the photographs referred to were received in evidence and marked respectively Government's Exhibits 14, 15, 16, 17 and 18 in evidence.)

Mr. Schnacke: Q. Mr. Erickson, I will show you People's [51] Exhibit No. 14 and ask you what that photograph depicts, and if you wish to refer to your diagram and tell where you were and what area is covered by that diagram you may do so.

A. This is a photograph taken of the hill and property on which the cabin was located from the open area at the bottom of the hill of which I previously spoke.

Mr. Schnacke: The photograph is relatively large and I think if I hold it before the jury they will be able to observe it.

The Court: Pass it if you wish.

Mr. Schnacke: At some later time it may well be the jurors would care to look at it, but at this time I think it is sufficient to give a general impression of the area from that photograph. If any juror cares to look at it more carefully, he or she may

(Testimony of Roy L. Erickson.)

raise his or her hand and we shall present it for examination.

Mr. Schnacke: Q. Mr. Erickson, I will show you Government's Exhibit No. 15 and ask you what that picture depicts and from what part of the property that picture was taken?

A. This is a photograph of the cabin taken from the ridge at the edge of the parking and game area.

Mr. Gladstein: Your Honor, may I ask, has it been testified when these photographs were taken?

Mr. Schnacke: Q. You have testified they were taken on [51] the day of the arrest, is that right?

A. That is right.

Q. I show you Government's Exhibit No. 16 and ask you what that picture depicts and where you were when you took that picture?

A. This is a photograph looking up the end of the entrance driveway into the parking and game area at the two automobiles and a ping pong table on the parking and game area.

Q. Would you give me the same information with respect to Government's Exhibit No. 17?

A. This is a photograph of the cabin and the clearing in front of it taken from the position we were in on the upper ridge and above it.

Q. That is from the position where you were from sunrise that morning up until the time of the arrest, is that what you mean?

A. That is correct.

Q. And looking toward the cabin?

(Testimony of Roy L. Erickson.)

A. That is right.

Q. Would you give me the same information with respect to Government's Exhibit No. 18?

A. This is a photograph from the entrance driveway looking into the cabin. It is taken from, oh, 25 or 30 feet down the driveway.

Mr. Erickson, you testified that on your initial [52] examination of the house you found certain containers with documents in them, that you examined them briefly on that occasion, and that you did something with them later on. What was the action that you took with respect to those documents and those containers at a later time?

A. I took them into our office and placed them in a tall wardrobe-type cabinet in the room to which I am assigned. The cabinet was placed there for those documents and contained nothing else, and was kept under lock and key and still is.

Q. Who had the key to that?

A. I had one and there is an office key.

Q. Did they remain in that cabinet until they were turned over to me? A. Yes, sir.

Q. Mr. Erickson, I will show you what appear to be two keys and ask you if you have ever seen those before?

A. These are the two keys I mentioned as having been lying on the dresser in the bedroom above the living room.

Mr. Schnacke: I will ask that those keys be marked Government's Exhibit next in order for identification only.

(Testimony of Roy L. Erickson.)

(The keys referred to were thereupon marked Government's Exhibit No. 19 for identification only.)

Mr. Schnacke: Q. I will show you a document and ask you [53] if you can identify that document? A. Yes, this is a document——

Mr. Gladstein: Just a moment.

Mr. Schnacke: I will withdraw that question.

Mr. Schnacke: Q. I will ask where you first saw that document?

A. I first saw this document in the expansion briefcase I previously mentioned as having been on the bed, in the bedroom above the living room.

Mr. Schnacke: I will ask that the document just described be received in evidence as Government's exhibit next in order.

Mr. Leonard: Objected to, if Your Honor please, on the ground it is incompetent, irrelevant and immaterial. There is no foundation laid and there is no showing that any process or warrant was issued to constitute a legal search.

The Court: Do you propose to connect this up?

Mr. Schnacke: I propose to connect up the name, Your Honor, to the name of one of the defendants found at the cabin. This is a document found at the cabin and a document which the Government believes is one of the instrumentalities used in the commission of this offense.

The Court: I will overrule the objection.

(Testimony of Roy L. Erickson.)

(The document referred to was thereupon received in evidence and marked Government's Exhibit No. 20.) [54]

Mr. Schnacke: Q. I will show you a card and ask you when and where you first saw that card, if you have seen it before?

A. I saw this in the expansion brief case where the last exhibit was found.

Mr. Schnacke: I will ask that that card be received in evidence as Government's Exhibit next in order.

Mr. Leonard: Same objection as to the previous exhibit, Your Honor.

The Court: Same ruling.

(The card referred to above was thereupon received in evidence and marked Plaintiff's Exhibit No. 21.)

Mr. Schnacke: Q. I will show you another card and ask you if you have ever seen that before and if so when and where?

A. This also was found in the expansion brief case in which the previous two exhibits were found.

Mr. Schnacke: I will ask that that card be received in evidence as Government's exhibit next in order.

Mr. Leonard: Same objection as to the previous exhibit, Your Honor.

The Court: Same ruling.

(The card referred to above was thereupon received in evidence and marked Government's Exhibit No. 22.) [55]

(Testimony of Roy L. Erickson.)

Mr. Schnacke: May I briefly describe the exhibits that have just been introduced into evidence? Government's Exhibit 20 is on a Treasury Department form captioned "Application for Social Security Account Number." The applicant is shown as Robert E. Newman, an address in Berkeley, and it bears what appears to be a signature, Robert E. Newman, with miscellaneous information as required in the form.

Government's Exhibit 21 is a Social Security card bearing Social Security Account No. 56-146-7492, bearing the name Robert E. Newman, 2001 Alston Way, Berkeley, California.

Government's Exhibit 22 is a library card on the free Public Library of New Haven, bearing the name Robert E. Newman, 195 Sherman Avenue.

Mr. Schnacke: Q. Mr. Erickson, I will show you a group of cards and ask you if you have ever seen those before, and if so when and where?

A. Yes, these were found in a zipper brief case on the dresser in the bedroom above the living room side of the house.

Mr. Schnacke: I will ask that those cards as a group be received in evidence as Government's exhibit next in order.

Mr. Leonard: We make the same objection, Your Honor. They are not connected up with any of the defendants and there is no showing of the process by which they were seized. It is incompetent, irrelevant and immaterial.

The Court: I asked counsel if they were going

(Testimony of Roy L. Erickson.)

to be [56] connected up. If they are not, they will be stricken.

Mr. Schnacke: These involve a different name and I will assure Your Honor that they will be connected up.

The Court: Overruled.

(The cards referred to were thereupon received in evidence and marked Government's Exhibit No. 23.)

Mr. Schnacke: Q. I show you a small card and ask you if you have ever seen that before, and if so when and where?

A. Yes, I found this in the drawer, the center drawer of the desk which is shown on a chart to be located in the living room on the first floor of the house.

Mr. Schnacke: I offer that card in evidence as Government's exhibit next in order.

Mr. Gladstein: I make the same objection. May it be deemed also that our motion to suppress is addressed to this and the preceding exhibits?

The Court: Yes, you may have a continuing motion to that effect.

Mr. Gladstein: Thank you.

(The card referred to was thereupon received in evidence and marked Government's Exhibit No. 24.)

Mr. Schnacke: Q. I show you a small green piece of paper and ask you if you have ever seen that before, and if so when and where?

A. Yes, I found this in the same drawer of the

(Testimony of Roy L. Erickson.)

desk in the [57] living room as I found the previous exhibit.

Mr. Schnacke: I will ask that that be introduced in evidence as Government's Exhibit No. 25.

Mr. Gladstein: The same objection and motion, Your Honor.

The Court: Very well, same ruling.

(The piece of green paper referred to above was thereupon received in evidence and marked Government's Exhibit No. 25.)

Mr. Schnacke: With Your Honor's permission I will describe to the jury the items just introduced.

Government's Exhibit No. 23 are printed cards. There are five cards. They all read the same:

"Joshua Newberg, teacher of violin, mandolin, 1224 Windemere Avenue, Menlo Park, by appointment, DAvenport 3-2604."

The same text appears on each of the cards.

Government's Exhibit No. 24 is another Social Security card bearing No. 54-948-3623, and the name of Joshua Newberg, 1514 MacDonald Avenue, Richmond 5, California.

Government's Exhibit No. 25 is a State of California Resident Citizen Fishing License made out in the name of Josh Newberg, 1224, and the street looks like "W-e-n-d-e-r-a" Menlo Park, which I take it is meant to be Windemere, but it does not appear to be that. It sets forth a description: Color of eyes, sex and a signature, which appears to read Joshua Newberg. That [58] is a sporting fishing license that expired December 31st, 1953.

(Testimony of Roy L. Erickson.)

Mr. Schnacke: Q. Mr. Erickson, I will show you a notebook and ask you if you have ever seen that before, and if so when and where?

A. Yes, this is a notebook that I found in the expansion brief case on the bed in the bedroom above the living room.

Mr. Schnacke: I will ask that that notebook be received in evidence as Government's exhibit next in order.

Mr. Gladstein: I make the same objection, if Your Honor please, and the same motion.

Mr. Schnacke: This document, if Your Honor please, I think speaks for itself, being found under the circumstances under which it was found at the cabin.

Mr. Gladstein: I do not understand that remark and I ask that it be stricken, if Your Honor please. It is not a legal argument.

Mr. Schnacke: I will withdraw the remark, if Your Honor please, if it disturbs counsel.

The Court: I will overrule the objection.

(The notebook referred to above was thereupon received in evidence and marked Government's Exhibit No. 26.)

Mr. Schnacke: If Your Honor please, I would like to read this exhibit to the jury. I will say to you first it is a small notebook with what appears to be ball-point pen writing [59] on both sides of many pages and with certain inserts connected with it, and I will apologize for stumbling on it because some of the writing is not too legible.

(Testimony of Roy L. Erickson.)

On the first page it appears to read: "Arne Kerr," a big letter M for Margaret, and under that a small c for Charley in parenthesis, and No. 3774. Under that "SW" and what apparently was corner, "cor." only the c appears to be visible now.

Mr. Gladstein: Your Honor, I am going to object to the "apparently." It is not apparent to me. Does Your Honor care to look at it? The letter "c" is there.

Mr. Schnacke: I thought I saw that as "cor" under there. I may be in error.

The Court: If you want to pass it to the jury maybe at a later time—I do not know what your plans are in connection with these documents. It is hard to say now, whether it is better for you to submit them to the jury or you to try to read them. Counsel says some of it is not clear.

Mr. Schnacke: I will withdraw any suggestion that that is anything but a "c." I will proceed to read until I run into further objections, if that is satisfactory to Your Honor.

Mr. Gladstein: The only objection I had was that counsel was interpolating something that was not on the document, that is all.

The Court: If there is any necessity for doing that you [60] had better pass the document to the jury, Mr. Schnacke. Otherwise read it.

Mr. Schnacke: We can pass the document at some later time. I will read such parts of it as I can read. Any illegible parts I will omit. There is a word I can't read, and then it appears to say,

(Testimony of Roy L. Erickson.)

“Stand alone.” That is in parenthesis. Under that it says, “Ask for Mike C—Don Wol 0869 is NS on H Street.”

Below that it becomes difficult to read, but I believe it says, “Ron or Wilk William calling. Did Mr. Applegate—” and an illegible word—oh, “call you about your house. Reply. We have changed our mind. Time 8:30.”

Then an illegible word, followed by what appears to be “corner,” and then “S. A.,” an illegible letter, followed by “Ave” and “Jefferson,” and below that the word “more.” Mr. Erickson’s initials are in the corner of that page.

Continuing on the next page, “ID each next week. Are you Williams? Yes. My name is Jim,” or what appears to be “Joan,” and an illegible name beginning with the letter B and appearing to end with the letter “Y.” The word “Alt.” “They will call, No. 1,” what appears to be “Broadway 8248; No. 2,” ditto marks, “18831, at 9:30 P.M., Broadway at—” and an illegible word.

The next page has some matter at the top that is illegible because it has been stricken. It is followed by “Mrs. Helen V. Williams,” and “C” in parenthesis, 4366, and an unidentifiable word apparently beginning with the letter R, a capital M for [61] Margaret, and the next line “1,” and some unidentified symbol followed by “7:00 P.M.,” the word “sign.” What appears to be, “RW City,” over which is written “Mabel,” and on the right margin “birth-

(Testimony of Roy L. Erickson.)

day,” followed by “PH,” and below that what appears to be “arrive Mex.”

Under that a word spelled as follows “B-a-s-t-r-a-n-i-n,” and a symbol in parenthesis. Under that “5751 Thompson Court,” and “Ask for Charles Destrain. You are Mr. & Mrs. Povly.” Then what appears to say, “See over at the bottom of the page.”

On the next page the initial M, the word “new, after notice, Mrs. Olive B. duB(C) 2866 Spruce Street, Boulder;” below which it says “24” and an unidentifiable word.

Below that, “Comes to,” and an unidentifiable word followed by “Avenue.” Below that an unidentifiable word followed by the letter “B, 7:00 PM and 5:30 or John Will.”

The next page is captioned “Joe Salmos,” the letter “C,” a small c in parenthesis, and the number “2072.”

Below that a small c in parenthesis, “P. H. Williams M,” the number “9245,” under that “S. R.,” with something stricken out and a hyphen and an S, “old statue” in parenthesis, “return, add “Sol.”

We next find the word “Ralph” at the head of the page, small c in parenthesis, followed by an “M” which is underlined, and then two unidentifiable symbols followed by “William C.,” and it appears to be “Schied.” Under that “7888.” “No. G (old [62] no)” and an unidentifiable word, a line drawn across under that, the letter “C” and a small “c” in parenthesis, “Joe Hanson, 923 North Clark Street,

(Testimony of Roy L. Erickson.)

shop second floor. Be sure you are speaking to him. You are Mr. Nelson, a friend of Mr.," and an unidentifiable name. The end of the quotation marks.

The next line starts with an unidentifiable word followed by "Excuse to get him aside such as getting," and then in parenthesis "Over an old desk refinished," and then in capital letters and underlined, "Good only if Ralph speaks. Write in advance," and in parenthesis "two weeks."

On the next page we have the word "Wash, Ed Harris," the number 0671, a small "c" in parenthesis, "SO Park Ave., Tac" or "Tas" under that.

Attached to that page it reads, "8:30 PM standard." Below that "Chehalis." Below that, "one block south of bus depot is triangle park with exhibit of ancient logging equipment," parenthesis, and below that "on," and then "Hwy."

Just a couple of more pages, Your Honor.

Attached to a blank page in the book is the word "Regis, 50 percent," and an unidentifiable word and what appears to be "meet." Below that "dues, September 1, begin," a per cent sign, followed by "Okay."

Attached to a blank page, some two pages further is a typewritten sheet with certain portions removed. You can see the parts cut out. It reads, "Time, No. 1, 8:00 PM, No. 2, [63] 10:30 PM, place Ashby and College, drugstore corner, ID. His name Harold Maxwell. Person approach, John Ludford." And then there are some stars across. Below that it reads, "For appointment call," and a part of the

(Testimony of Roy L. Erickson.)

work can be read "Offic." The balance of the line there is removed except for the words "or" or the letters "or" at the end of that line.

The first part of the following line is removed, and then it goes on, "Ask for appointment for John Ludford, who has a heart condition and wants an electrocardiogram taken. He will make every effort to be at the appointed time and place on the day the call is received. The call to him should be made before 7:00 PM if possible. If the 8:00 PM appointment fails, he will be there at ten thirty or on following days until contact. He will arrive at the corner carrying two white bags."

In the corner are Mr. Erickson's initials and then on the last page on which there is any writing there is the caption, "To Mollie." Below that, "Ralph and Breta M," and something scratched out that I can't read. Below that "Phil." The next line, "Joe," a word I can't read that begins with a letter "A" followed by "MNC." Below that "W" with a dash, something stricken followed by "Sam O," a dash, "O Lady, Phil," a dash, something stricken in ink, followed by a word in pencil that seems to be "Sauna," which I can't otherwise decipher. [64]

Mr. Gladstein: If Your Honor please, now that counsel has read that, I will say I haven't examined it before in any detail, and I now move to have it all stricken on the ground it isn't probative of any issue raised by this indictment. There is no proper foundation.

The Court: Well,——

(Testimony of Roy L. Erickson.)

Mr. Gladstein: It appears to be something offered, some general thing of some kind which doesn't relate to the issues that any defendant has been charged with.

The Court: It was offered and admitted as a document found at this place.

Mr. Gladstein: It was received as such, but my point goes to an additional ground than the other grounds heretofore urged, and that is that the mere presence of a notebook or some document at that time and place wouldn't in and of itself make it material, competent and relevant to some issue raised by the indictment.

The Court: It is pretty early to say that. I can't rule on that now.

Mr. Gladstein: Very well.

The Court: You can move to strike it if it isn't connected up, if it doesn't have some relevancy later on.

Mr. Gladstein: Very well.

Mr. Schnacke: Q. Mr. Erickson, I will show you a small scrap of paper and ask you if you have ever seen that before, [65] and, if so, when and where?

A. Yes, I have. I found this in the zipper briefcase that was on the dresser in the bedroom above the living room.

Mr. Schnacke: I will ask that that paper be received in evidence and marked Government's exhibit next in order.

Mr. Gladstein: May I examine it for a moment?

(Testimony of Roy L. Erickson.)

Yet, I will make the same objection to this as has been heretofore made to similar documents, if your Honor please.

The Court: I think these documents in some way are going to be connected up further.

Mr. Schnacke: Your Honor please, the offer at the present time is on the basis of their being found in the cabin. This particular document, as well as all of the documents that we have introduced so far, will be connected up.

That is not necessarily true of every document that we will heretofore offer. I am offering them at this time as having been found in the cabin in the presence of these defendants.

Mr. Gladstein: Your Honor, I think that is a misstatement already. I don't understand from this witness' testimony that any of these documents were taken from the house in the presence of any of the defendants. Perhaps that was just an inadvertence on counsel's part.

At the same time, I would like to request if the Court would ask Mr. Schnacke to do this, that he tell me when they [66] are offered that they have no intention of connecting them further, that he would be good enough to advise us of that, because otherwise I assume he is going to do some connecting.

The Court: Admitted.

The Clerk: Plaintiff's Exhibit 27 introduced and filed into evidence.

(Testimony of Roy L. Erickson.)

(Thereupon document referred to above was received in evidence and marked Plaintiff's Exhibit No. 27.)

The Court: Where did you say this was found?

The Witness: In the briefcase on the dresser.

Mr. Schnacke: Q. Mr. Erickson, I will show you another notebook and ask if you have ever seen that before and, if so, when and where?

A. Yes. I also found this in that briefcase that was on the dresser in the bedroom above the living room.

Mr. Schnacke: I will ask that that notebook be received in evidence as Government's Exhibit next in order.

Mr. Gladstein: Same objection, if Your Honor please.

The Court: Same ruling.

The Clerk: Plaintiff's Exhibit 28 introduced and filed in evidence.

(Thereupon notebook referred to above was received in evidence and marked Plaintiff's Exhibit No. 28.) [67]

Mr. Schnacke: Q. Mr. Erickson, you mentioned earlier that on your examination of the cabin you discovered that there were two typewriters on the premises. Will you tell us again what type of typewriters they were and where you discovered them?

A. One was under the desk on the first floor of the cabin in the living room. That was a portable Royal typewriter.

The second was found on the second floor of the

(Testimony of Roy L. Erickson.)

cabin, in the small bedroom that was more or less above the kitchen side of the house, and it was under the dresser. That was a Remington upright or standard style of typewriter.

Q. In connection with those typewriters, did you thereafter have occasion to make certain tests?

A. I took specimens of the type from them, yes.

Q. I will show you a group of typewritten pages and ask you if they are the specimens that you took from one of the typewriters found in the cabin?

A. Four sheets were taken from the Remington typewriter on February 16, 1954; and the remaining 12 were taken on March 17, 1954, from the same typewriter.

Q. Now, Mr. Erickson, those sheets, as I understand it, contain meaningless matter typed out simply to test the typewriter, is that correct; or to give adequate samples of the work done by the typewriter?

A. That's right. [68]

Q. Have those typewriter samples been in your possession since the time you made them?

A. Except for the period they were transmitted to our laboratory in Washington.

Q. You sent them to the FBI laboratory in Washington, D. C.?

A. That's right.

Q. And were they returned to you by that laboratory?

A. Yes.

Q. And they have been in your possession since that time until you gave them to me?

A. That's right.

(Testimony of Roy L. Erickson.)

Mr. Schnacke: While counsel is examining those—I intend to offer those in evidence, Your Honor please, but counsel is looking at them carefully—I will ask the witness to examine these other type-written pages and request that he tell us what they represent?

A. Nine of these pages were taken as specimens from the Royal Portable typewriter on February 15th, 1954. The remaining seven were taken from the same typewriter on March 18, 1954.

Mr. Schnacke: At this time I offer as evidence, solely as samples of the characteristics of the Remington Noiseless typewriter found in the cabin, the document Mr. Erickson described as the sample he had taken from the Remington Noiseless typewriter. [69]

Mr. Gladstein: I wish Your Honor would examine the contents before ruling. I make more or less the same objection, but I think particularly in view of the content they should not be received in evidence, although I understand counsel is offering them merely as a sample of the kind of typewriting done on the two typewriters.

The Court: Not for their contents?

Mr. Schnacke: Not for their contents, Your Honor.

Mr. Gladstein: But I don't see how you can separate the contents in any way.

The Court: Well, let them be marked for the limited purpose of being samples of the typewriter,

(Testimony of Roy L. Erickson.)

and they will not be exhibited to the jury unless it appears there is something else.

Mr. Gladstein: Very well. May I add one more objection that I had in mind, Your Honor, and that is that I think any sample taken from a typewriter whose seizure was not proper or legal would be improper to offer. That would go to these two.

The Court: You are making a motion——

Mr. Gladstein: To suppress.

The Court: All right, denied.

The Clerk: Plaintiff's Exhibit 29 introduced and filed into evidence as limited by the Court.

(Thereupon typewriting sample identified above [70] was received in evidence as Plaintiff's Exhibit 29, for the limited purpose stated.)

Mr. Schnacke: At this time I will offer the typewriter samples Mr. Erickson testified he took from the Royal typewriter found on the premises, as Government's exhibit next in order.

The Court: Subject to the same objection and admitted for the limited purpose already specified?

Mr. Schnacke: Yes, Your Honor.

The Clerk: Plaintiff's Exhibit 30 introduced and filed into evidence, as limited by the Court.

(Thereupon typewriting sample identified above was received in evidence and marked Plaintiff's Exhibit No. 30 for the limited purpose stated.)

Mr. Schnacke: Q. Mr. Erickson, I will show

(Testimony of Roy L. Erickson.)

you a three-page document and ask you if you have even seen that before, and if so, when and where?

A. Yes. I found this in a cardboard box that I previously testified was found on top of the dresser in the bedroom above the living room. That was a box which was unmarked. That is, I couldn't tell what the original purpose of the box was. On one end there were some numerals pressed in it or inked in reading "52-53".

Mr. Schnacke: I offer that document in evidence as Government's Exhibit next in order. [71]

Mr. Gladstein: Before we advise the Court. may we read it? It is a long three-page document.

The Court: Are you going to read this?

Mr. Schnacke: I propose to read parts of it, Your Honor. Might it be convenient to recess while counsel is referring to it? It might take some time.

Mr. Leonard: My suggestion is, if Mr. Schnacke has any other documents that would require some little time, we might see them now.

Mr. Schnacke: Yes, I have several.

Mr. Leonard: We have never seen these before.

The Court: Why don't you give them to counsel? We will have a recess a little bit earlier today and you can look at these documents.

Mr. Schnacke: Yes, I think that might be quite advisable.

The Court: We will take a recess a little bit

(Testimony of Roy L. Erickson.)

earlier this afternoon, ladies and gentlemen, so counsel can look at these documents.

(Short recess.)

Mr. Gladstein: May it please Your Honor, at the recess Mr. Schnacke handed us some eleven documents. They comprise approximately 50 pieces or more, in some instances of very closely typed material and in some instances of written material. It is obvious that Mr. Leonard and I have had no [72] opportunity to examine them. We would not be in a position to make our statement to the Court concerning them.

Mr. Schnacke: If Your Honor please, maybe I can shorten this. I will offer them for identification at this time and offer them in evidence tomorrow morning and counsel will have an opportunity over night to examine them.

The Court: That will be better.

Mr. Schnacke: So the document last referred to by the witness, Mr. Erickson, I will offer for identification, to bear the Government's next number.

Mr. Gladstein: Is that the three-page document?

The Clerk: That is correct, Mr. Gladstein.

(Thereupon the three-page document referred to was marked Plaintiff's Exhibit No. 31 for identification.)

Mr. Schnacke: Q. Mr. Erickson, I will show you a notebook and ask you if you have even seen that before and, if so, when and where?

A. Yes. I found this in one of the three boxes I previously testified were at the foot of the bed

(Testimony of Roy L. Erickson.)

in the bedroom above the living room side of the house. This particular box was apparently originally a box for soup—Rancho soup.

Mr. Schnacke: I will ask that the notebook described by the witness be marked Government's Exhibit 32 for identification. [73]

The Clerk: Plaintiff's Exhibit No. 32 marked for identification.

(Thereupon notebook referred to above was marked Plaintiff's Exhibit No. 32 for identification.)

Mr. Schnacke: Q. I show you a two-page document and ask you if you have ever seen that before, and, if so, when and where?

A. This was in one of the suitcases in the closet of the bedroom on the living room side of the house. The suitcase I have previously testified to as having some documents. It appeared to be a tanned suitcase, leatherette or similar material.

Mr. Schnacke: I will ask that the document described by the witness be marked Government's Exhibit next in order for identification.

(Thereupon two-page document referred to was thereupon marked Plaintiff's Exhibit No. 33 for identification.)

Mr. Schnacke: Q. I will show you what appears to be three identical mimeographed copies of a document—or four copies of the same document, and ask you if you have ever seen those before, and, if so, when and where?

A. All four of these were found in the expan-

(Testimony of Roy L. Erickson.)

sion briefcase I previously testified to as being on the bed in the bedroom [74] on the living room side of the house.

Mr. Schnacke: I will ask that all of those documents, all four of those documents, be offered as Government's Exhibit next in order for identification.

(Thereupon four copies of mimeographed document referred to above was marked Plaintiff's Exhibit No. 34 for identification.)

Mr. Schnacke: Q. I will show you a document consisting of several pages and ask you if you have ever seen that before, and, if so, when and where?

A. This document was found in its present state in the expansion briefcase that the last exhibit was found in.

Mr. Schnacke: I will ask that that document just described by the witness be marked Government's Exhibit next in order for identification.

(Thereupon several page document referred to above was marked Plaintiff's Exhibit No. 35 for identification.)

Mr. Schnacke: Q. I show you another document which appears to be torn in places and ask you if you have ever seen that before, and, if so, when and where?

A. This was also found in the expansion briefcase.

Q. The cellophane around it, I take it that was put there by you to preserve it?

A. I put it in there for that purpose, yes. [75]

(Testimony of Roy L. Erickson.)

Mr. Schnacke: You have no objection to the cellophane being on it?

Mr. Gladstein: No.

Mr. Schnacke: I will ask that that document be marked Government's Exhibit next in order for identification.

(Thereupon torn document described above was marked Plaintiff's Exhibit No. 36 for identification.)

Mr. Schnacke: Q. I show you a two-page document and ask you if you have even seen that before, and, if so, when and where?

A. This was also found in the expansion briefcase.

Q. The same expansion briefcase to which you have previously referred? A. Yes, sir.

Mr. Schnacke: I will ask that that document just described by the witness be marked Government's Exhibit next in order, for identification.

(Thereupon two-page document described above was marked Plaintiff's Exhibit No. 37 for identification.)

Mr. Schnacke: Q. I show you a four-page document and ask you if you have ever seen that document before, and, if so, when and where?

A. This was also in the expansion briefcase I have previously [76] testified to.

Q. I call your attention to the fact that there is a paper clip at the upper left-hand corner of that. Was that document clipped together in that fashion when you found it?

(Testimony of Roy L. Erickson.)

A. When we found it, yes; the original staple was probably removed for photostating.

Q. On any of these documents have you tampered with them in any way or changed them in any way?

A. No.

Q. Done anything to them other than examine them?

A. No.

Q. In some cases make copies of them?

A. No.

Mr. Schnacke: I will ask that that document identified by the witness be marked Government's Exhibit next in order for identification.

(Whereupon four-page document identified above was marked Plaintiff's Exhibit No. 38 for identification.)

Mr. Schnacke: Q. I show you a document consisting of several pages and ask you if you have ever seen that document before? And, if so, when and where?

A. This was also found in the expansion briefcase that was on the bed in the bedroom above the living room side of the house. [77]

Mr. Schnacke: I ask that that document just referred to be marked Government's Exhibit next in order for identification.

(Thereupon document referred to above was marked Plaintiff's Exhibit No. 39 for identification.)

Mr. Schnacke: Q. I show you what appears to be two separate documents, each consisting of a number of pages stapled together, and ask if you

(Testimony of Roy L. Erickson.)

have ever seen that document before, and, if so, when and where?

A. This was also in the expansion briefcase, as the last exhibit.

Q. I call your attention to the fact that on that document, there is a staple on it. Was that the condition in which you found it?

A. The staples may have been removed for photostating, and then placed back.

Q. But if it is now stapled, it was stapled in that fashion when you found it?

A. Yes, sir.

Mr. Schnacke: I will ask that the document just described be marked as Government's Exhibit next in order for identification.

(Thereupon document described above was marked Plaintiff's Exhibit No. 40 for identification.) [78]

Mr. Schnacke: Q. I show you several miscellaneous sized documents and an envelope, and ask you if you have ever seen those before, and, if so, when and where, and under what circumstances the documents were arranged, or in what fashion they were arranged?

A. All of the papers clipped to the envelope were in the envelope, and the envelope with its contents was in the expansion briefcase on the bed in the bedroom above the living room side of the house.

Mr. Schnacke: I will ask that all of the documents and the envelope in which the documents

(Testimony of Roy L. Erickson.)

were found be marked as Government's Exhibit next in order for identification.

(Thereupon documents and envelope described above were marked Plaintiff's Exhibit No. 41 for identification.)

Mr. Gladstein: Your Honor, it would assist me in my examination of these documents this evening, if counsel would be good enough to state whether some or any or all of these, beginning with, I think, 31 for identification, fall in the category of what he said were documents concerning which he would or would not offer further evidence in connection.

The Court: Offer what?

Mr. Gladstein: Further evidence of connection with the defendants, or any of them.

Mr. Schnacke: Your Honor please, these documents are [79] being offered at this time, and I would prefer they be offered without any representation of further connecting up by reason of the fact that I think it is quite clear some of them will and some of them will not be connected up.

I prefer to have a ruling as to whether or not these documents found on these premises and under these circumstances are or are not admissible as they were so found. If that ruling is adverse to the Government, then I will be happy to make an offer such as suggested by counsel for the defendant as to which of the documents we will connect up and in what fashion.

The Court: Well, we better wait to meet that when you offer them.

(Testimony of Roy L. Erickson.)

Mr. Schnacke: Your Honor please, I have here an additional large number of documents which I will offer in groups, if I may, and will provide copies to the defendant in the same fashion as the others.

I offer them at this time solely for identification and will renew our offer—make our offer to introduce them into evidence tomorrow.

The Court: Mr. Schnacke, would it be possible for you to get all these documents marked, given an identification number by the Clerk after we adjourn today and furnish copies to the other side? Then you will have them all given a number already by the Clerk and cover them then one at a time, or [80] all in one group. It saves your walking back and forth each time you go to pick up a paper and go through the routine of doing that.

Mr. Schnacke: Very well.

The Court: That may save time.

Mr. Schnacke: All right.

The Court: I don't know whether that is in accordance with what you planned as to the method of presenting the matter. I just suggest that at this time. Maybe it isn't possible. However, there is a large number of papers, and if you had them all given a number by the Clerk tonight, then you can put the witness on to identify them all at one time, one right after the other, without any difficulty.

Mr. Schnacke: Yes, Your Honor. Will you indulge me for a moment?

Your Honor please, the only further matter I

(Testimony of Roy L. Erickson.)

have from this witness is the introduction of these documents. I will try to do it as expeditiously as possible, in the same fashion we have been doing.

The Court: If you want to do it that way,——

Mr. Schnacke: I think we can go through them rather rapidly.

The Court: All right.

Mr. Schnacke: Q. Mr. Erickson, I show you a group of papers and ask you if you have ever seen those before, and [81] under what circumstances?

The Court: This witness, I take it from what you said, is being used only for the purpose of identifying where the documents came from?

Mr. Schnacke: Yes, Your Honor.

The Court: And where they had been?

Mr. Schnacke: That is right.

The Witness: These are seven receipts found in the cardboard box I previously testified to as having been found in the closet at the head of the stairway on the second floor. That cardboard box was apparently originally a container for Burgermeister beer.

Mr. Schnacke: I will offer the documents which have been described as a group as Government's Exhibit next in order for identification.

(Thereupon documents referred to above were marked Plaintiff's Exhibit No. 42 for identification.)

Mr. Schnacke: Q. And I will ask the witness if the documents he is now examining have ever

(Testimony of Roy L. Erickson.)

before been seen by him and, if so, when and where?

A. These six slips of paper were also found in the box found in the closet at the head of the stairway on the second floor.

The Court: What are you doing with those, counsel? Do [82] you just have a clip on them?

Mr. Gladstein: I suggest they be put in an envelope.

The Court: Have you got any envelopes? Otherwise, my experience with some of these cases is that by the time the lawyers get through using these exhibits they get so mixed up we never can find them again. Put them in in some way so we won't get mixed up on them, now. The last one we had was No. 42.

The Clerk: No. 42 for identification, Your Honor.

Mr. Schnacke: And the group of documents last described I will ask be marked for identification as Government's Exhibit next.

(Thereupon group of papers referred to above were marked Plaintiff's Exhibit No. 43 for identification.)

Mr. Gladstein: One of these got lost already, Your Honor. Were there six or seven?

Mr. Schnacke: Seven.

Mr. Gladstein: I only find six.

(Further colloquy inaudible to the Reporter.)

Mr. Schnacke: Q. Did you identify that? The

(Testimony of Roy L. Erickson.)

document you are now looking at, Mr. Erickson, where did you find those?

A. These seven receipts were also found in the Burgermeister beer box in the closet at the head of the stairway. [83]

Mr. Schnacke: I will ask that the group of documents last identified be received and bear the Government's next in order.

(Thereupon seven receipts referred to were marked Plaintiff's Exhibit No. 44 for identification.)

Mr. Schnacke: Q. Now, I will show you a document consisting of one page, and ask you when and where you saw that, Mr. Erickson?

A. This was also in the Burgermeister beer box in the closet at the head of the stairway.

Mr. Schnacke: I will ask that that be marked with the Government's Exhibit next in order.

(Thereupon document referred to above was marked Plaintiff's Exhibit No. 45 for identification.)

Mr. Schnacke: Q. I will show you another document and ask you if you have seen that document before?

A. This was also found in the box in the closet at the head of the stairway.

Mr. Schnacke: May that be marked Government's Exhibit 46 for identification?

(Thereupon document referred to was marked Plaintiff's Exhibit No. 46 for identification.)

(Testimony of Roy L. Erickson.)

Mr. Schnacke: Q. And I will ask you the same question [84] with respect to that document (handing document to the witness)?

A. This was also found in the box in the closet at the head of the stairway.

Mr. Schnacke: I will ask that that document, consisting of three pages, be marked Government's Exhibit 47 for identification.

(Thereupon three-page document referred to was marked Plaintiff's Exhibit No. 47 for identification.)

Mr. Schnacke: Q. And I will ask you the same question with respect to that document?

A. This was also found in the box in the closet at the head of the stairway.

Mr. Schnacke: May that be marked as Government's Exhibit 48 for identification?

(Thereupon document referred to above was marked Plaintiff's Exhibit No. 48 for identification.)

Mr. Schnacke: Q. And I will ask you the same question with respect to that document?

A. This was also found in the box in the closet at the head of the stairway.

Mr. Schnacke: May that be marked Government's Exhibit 49 for identification?

(Thereupon document referred to above was marked Plaintiff's Exhibit No. 49 for identification.) [85]

Mr. Schnacke: Q. And I will ask the same question with respect to that document.

(Testimony of Roy L. Erickson.)

A. This, too, was found in the box in the closet at the head of the stairway.

Mr. Schnacke: May that be marked Government's Exhibit 50 for identification?

(Thereupon document referred to above was marked Plaintiff's Exhibit No. 50 for identification.)

Mr. Schnacke: Q. And the same question with respect to this document?

A. And this was also found in the box in the closet at the head of the stairway.

Mr. Schnacke: May that be marked Government's Exhibit 51 for identification?

(Thereupon document referred to above was marked Plaintiff's Exhibit No. 51 for identification.)

Mr. Schnacke: Q. Same question as to that document?

A. This was found in the box in the closet at the head of the stairway.

Mr. Schnacke: May that be marked Plaintiff's Exhibit 52 for identification?

(Thereupon document referred to above was marked Plaintiff's Exhibit No. 52 for identification.) [86]

Mr. Schnacke: Q. Did you see that document in the cabin and, if so, where?

A. Yes. This was also in the box in the closet at the head of the stairway.

Mr. Schnacke: May that be marked Government's Exhibit 53 for identification?

(Testimony of Roy L. Erickson.)

(Thereupon document referred to above was marked Plaintiff's Exhibit No. 53 for identification.)

Mr. Schnacke: Q. And the same question as to that document?

A. This, too, was found in the box in the closet at the head of the stairway.

Mr. Schnacke: May that be marked Exhibit 54 for identification?

(Thereupon document referred to above was marked Plaintiff's Exhibit No. 54 for identification.)

Mr. Schnacke: Q. Same question with respect to that document?

A. This was found in the box in the closet at the head of the stairway.

Mr. Schnacke: May that be marked Exhibit 55 for identification? [87]

The Clerk: Plaintiff's Exhibit No. 55 marked for identification.

(Thereupon document referred to above was marked Plaintiff's Exhibit No. 55 for identification.) [87-A]

Mr. Schnacke: Q. When and where did you see that document?

A. This was found in the brief case which was on the dresser in the bedroom on the living room side of the house.

Q. I take it it was not in the cellophane bag; it was in the loose fashion, is that right?

A. That is right.

(Testimony of Roy L. Erickson.)

Mr. Schnacke: May that be marked Government's Exhibit 56?

(Whereupon the document referred to was marked Government's Exhibit No. 56 for identification only.)

Mr. Schnacke: Q. I show you a manila folder containing a manila envelope and ask you if you saw that the the cabin?

A. This was in the expansion brief case which was on the bed of the bedroom above the living room side of the house.

Mr. Schnacke: I will ask that the large envelope referred to by the witness be marked Government's Exhibit 57 for identification.

(Whereupon the large envelope referred to above was marked Government's Exhibit No. 57 for identification only.)

Mr. Schnacke: Q. I will show you a book containing numbers in writing and ask the same question in respect to that.

A. This was found in the expansion brief case on the bed, in [88] the bedroom above the living room.

Mr. Schnacke: May that be marked Government's Exhibit 58 for identification?

(Whereupon book referred to above was marked Government's Exhibit No. 58 for identification only.)

Mr. Schnacke: Q. I will show you a single sheet of paper and I will ask you the same question with respect to that.

(Testimony of Roy L. Erickson.)

A. This, too, was found in the expansion brief case on the bed in the bedroom above the living room.

Mr. Schnacke: May that be marked Government's Exhibit 59?

(Whereupon sheet of paper referred to above was marked Government's Exhibit No. 59 for identification only.)

Mr. Schnacke: Q. The same question with respect to this paper?

A. This was found in the expansion brief case on the bed as previously stated.

Mr. Schnacke: May that be marked Government's Exhibit 60 for identification?

(Whereupon paper referred to above was marked Government's Exhibit No. 60 for identification only.)

Mr. Schnacke: Q. I will show you a notebook and ask you if you have seen that document before? [89]

A. This was found in the expansion brief case by the bed.

Mr. Schnacke: If Your Honor please, I discovered that the photostatic copies that I have of this notebook are incomplete. May I ask that the Government and the defendants have the opportunity to withdraw this notebook and to examine it or make copies from it if they so desire?

The Court: Very well.

Mr. Schnacke: I ask that the notebook be

(Testimony of Roy L. Erickson.)

marked Government's Exhibit 61 for identification.

(Whereupon notebook referred to above was marked Government's Exhibit No. 61 for identification only.)

Mr. Schnacke: Q. Will you identify that document?

A. This was found in the expansion brief case on the bed.

Mr. Schnacke: May that be marked 62 for identification?

(Whereupon document referred to above was marked Government's Exhibit No. 62 for identification only.)

Mr. Schnacke: Q. I will show you a folder containing certain papers and ask you if you can identify that.

A. The papers as they are now clipped were found in the folder they are now contained in and were found in the expansion brief case on the bed.

Mr. Schnacke: May that be marked Government's 63 for identification? [90]

(Whereupon papers and folder referred to above were marked Government's Exhibit No. 63 for identification only.)

Mr. Schnacke: Q. I show you a notebook and ask you if you can identify that?

A. This was found in the expansion brief case on the bed, in the bedroom above the living room.

Mr. Schnacke: May that be marked 64 for identification?

(Testimony of Roy L. Erickson.)

(Whereupon notebook referred to above was marked Government's Exhibit No. 64 for identification only.)

Mr. Schnacke: Q. I will show you a sheet of paper bearing typing and handwriting and ask you if you can identify that?

A. This was found in the expansion brief case on the bed.

Mr. Schnacke: May that be Government's 65 for identification?

(Whereupon sheet of paper referred to above was marked Government's Exhibit No. 65 for identification only.)

Mr. Schnacke: Q. Will you identify this sheet of paper?

A. This was found also in the expansion brief case on the bed.

Mr. Schnacke: May that be Government's 66 for identification? [91]

(Whereupon sheet of paper referred to above was marked Government's Exhibit No. 66 for identification only.)

Mr. Schnacke: Q. I will show you a group of several pages and ask you if you can identify those?

A. These were found clipped together in the brief case, the expansion brief case on the bed in the bedroom above the living room.

Q. They appear to be torn from a notebook. Did you tear them from a notebook. Did you tear

(Testimony of Roy L. Erickson.)

them from the notebook or were they in that condition when you found them?

A. No, they were in that condition.

Mr. Schnacke: I will ask that be marked 67 for identification.

(Whereupon pages from notebook referred to above were marked Government's Exhibit No. 67 for identification only.)

Mr. Schnacke: Q. I will show you several pages containing handwriting and ask you to identify that.

A. These were found clipped together in the expansion brief case that was on the bed.

(Whereupon pages referred to above were marked Government's Exhibit No. 68 for identification only.)

Mr. Schnacke: Q. I show you a small page and a large [92] page clipped together. Can you identify those?

A. These were found as they are now fastened in the expansion brief case that was on the bed.

Mr. Schnacke: May that be 69 for identification?

(Whereupon pages referred to above were marked Government's Exhibit No. 69 for identification only.)

Mr. Schnacke: Q. I will show you one page folded and ask you for your identification of that?

A. This was found in the expansion brief case that was on the bed.

(Testimony of Roy L. Erickson.)

Mr. Schnacke: May that be marked 70 for identification?

(Whereupon folded page referred to above was marked Government's Exhibit No. 70 for identification only.)

Mr. Schnacke: Q. I show you several pages held together by a paper clip and ask you where you found those and in what condition you found them?

A. The four papers, or I should say the three papers, and one three by five card, were folded and in the envelope and all were contained in the expansion brief case which was found on the bed.

Mr. Schnacke: May that be marked 71 for identification?

(Whereupon the documents referred to were marked Government's Exhibit No. 71 for identification only.) [93]

Mr. Schnacke: Q. I show you an envelope and a sheet of paper and ask you if you can identify those and tell me of the circumstances in which they were found?

A. The paper was found folded in the envelope and the envelope was found in the expansion brief case that was found on the bed.

Mr. Schnacke: May the envelope and the paper together be marked Plaintiff's Exhibit 72 for identification?

(Whereupon envelope and paper referred to above were marked Government's Exhibit No. 72 for identification only.)

(Testimony of Roy L. Erickson.)

Mr. Schnacke: Q. Will you identify that paper?

A. This was found in the expansion brief case which was on the bed.

Mr. Schnacke: May that be marked 73 for identification?

(Whereupon the paper referred to above was marked Government's Exhibit No. 73 for identification only.)

Mr. Schnacke: Q. I will show you an envelope and a sheet of paper and ask you where you first saw those and the circumstances under which you found those?

A. The paper was found folded in the envelope and the envelope was found in the expansion brief case which was on the bed.

Mr. Schnacke: May this be marked Government's 74 for [94] identification?

(Whereupon envelope and sheet of paper referred to above were marked Government's Exhibit No. 74 for identification only.)

Mr. Schnacke: Q. I will show you a manila envelope and a sheet of paper. Where did you see those?

A. The paper was found folded in the envelope and the envelope was found in the expansion brief case which was on the bed.

Mr. Schnacke: May that be marked 75 for identification?

(Testimony of Roy L. Erickson.)

(Whereupon manila envelope and sheet of paper referred to above were thereupon marked Government's Exhibit No. 75 for identification only.)

Mr. Schnacke: Q. I will show you a group of papers appearing to be two envelopes and papers attached thereto and ask where you saw those and the circumstances?

A. The two papers were found in the smaller envelope and the smaller envelope and the larger envelope all was found in the expansion brief case which was on the bed.

Mr. Schnacke: May that be marked Government's Exhibit 76 for identification?

(Whereupon the group of papers and envelopes referred to above were marked Government's Exhibit No. 76 for identification only.)

Mr. Schnacke: Q. I will show you what appear to be two envelopes and two pieces of paper clipped together. I ask you where you saw those and the circumstances of your identification?

A. The air mail envelopes and the two slips of paper were in the larger brown envelope and all was found in the expansion brief case which was on the bed.

Mr. Schnacke: May that be Government's 77 for identification?

(Whereupon the envelopes and paper referred to above were thereupon marked Government's Exhibit No. 77 for identification only.)

Mr. Schnacke: If your Honor please, I have no further questions of this witness. If any additional questions of this witness on direct examination are necessary to clarify any points that may arise after the offer of these documents in evidence, I would like to reserve the right to recall him.

At this time we are through with the direct examination of this witness.

Mr. Gladstein: If Your Honor please, we have just been handed some 200 or 250 pages of documents, some 30 or 40 exhibits. If I were to stay up all night long reading them, I doubt if I could possibly——

The Court: These documents have been identified.

Mr. Gladstein: That is true as to the documents since 31, [96] but it is not true as to others that have been received in evidence. I would like to suggest that this is precisely the kind of material that we requested by proper motion before the trial, and we are now placed in a position where we cannot examine these. They are going to be offered in evidence by counsel for the prosecution at some point through some witness, and we should have a familiarity with these documents in advance. I do not want to take the time of the Court and jury on this occasion.

The Court: All the witness has testified as to the other documents is as to where he found them.

Mr. Gladstein: That may well be. It is a matter of deferring when we have to read these and examine them.

The Court: Do you want to put this witness back on and cross examine him altogether at one time? Is that what you mean?

Mr. Gladstein: I do not think the difference between now and 4:00 o'clock——

The Court: Our adjournments are usually at 4:30. Is there some other matter you can take up? I think it is a little bit tiring to put in all these documents in one day, but after all, we would not like to keep the jury here indefinitely in days if we can clean up, take care of some other matters.

Mr. Schnacke: I would assume there would be some cross [97] examination as to matters as to which Mr. Gladstein has not claimed surprise. He certainly does not claim surprise as to all matters.

The Court: Can't you start your examination with respect to the other matters the witness has testified to except for these documents?

Mr. Gladstein: I would prefer not, if Your Honor please. I have been doing nothing but making a record here of the documents that have been handed to me, which I would like to examine, and that includes some of the documents that were received in evidence.

The Court: Are you going to have any more documents from this witness?

Mr. Schnacke: No, Your Honor. I have completed the examination of this witness. I can produce another witness if they want to waive cross examination of Mr. Erickson.

Mr. Gladstein: We will not waive any cross examination. If Your Honor requires it, we will com-

mence the cross examination now, but we would prefer to have an opportunity to examine the documents. I would think in the orderly process that would be desirable, instead of chopping up our cross examination of the witness at the point where counsel chose to leave off with all these documents in evidence.

The Court: He did that at the Court's suggestion to save time. [98]

Mr. Leonard: May I suggest that when I argued the motion for discovery, for a bill of particulars particularly, in which we saw precisely this information, Your Honor made some observation from the bench. I do not purport to quote you verbatim. But the general tenor of it was that if, as and when documents of this kind were introduced, the defense would be given plenty of opportunity to examine them and prepare for them.

The Court: I do not suggest that you would not have the opportunity to look at them. I wondered if you did not have some examination that you could go into to save time that does not refer to the documents. It is only recently that the examination has been confined to the documents.

I guess the jury is getting a little tired today sitting here anyhow. I see you nod your heads. We will take an adjournment until 10:00 o'clock tomorrow morning.

Please bear in mind the admonition of the Court.

(Whereupon this cause was adjourned to the hour of 10:00 o'clock a.m., Wednesday, April 14, 1954.) [99]

The Clerk: United States vs. Kremen, et al, further trial. Roy Erickson on the stand.

ROY L. ERICKSON

resumed the stand as a witness on behalf of the Government, and having been previously duly sworn, testified further as follows:

Cross Examination

Mr. Gladstein: Shall I proceed, Your Honor?

Q. Mr. Erickson, you have told us that on the 27th of August from about 5 o'clock in the morning you and certain other agents of the Federal Bureau of Investigation took up a position from which you could keep the house there or cabin at the Twain Harte and its occupants under surveillance, that is right, isn't it?

A. That's right.

Q. I think you said that there were, how many other agents with you?

A. Four.

Q. Five of you, including yourself?

A. Five altogether.

Q. Did you tell us who the other agents were?

A. No, I didn't.

Q. Would you do so?

A. Yes. There was Albert Clark.

Q. Yes?

A. Joseph McCann—that is spelled M-c C-a-n-n. James Carlisle—C-a-r-l-i-s-l-e. And Robert Hamilton—H-a-m-i-l-t-o-n.

Q. Now, the position that you and the other four agents whom you have just named took up

(Testimony of Roy L. Erickson.)

was on a hillside or in a hilly area from which you could look down, is that right?

A. That's right.

Q. And that is the spot you indicated generally in that first exhibit which represented your drawing of the place?

A. That is right.

Q. Were you joined between then and 1:04 in the afternoon by any other agents?

A. No.

Q. And were all of the other agents whom you named, were they continuously with you during that period of time?

A. Yes, sir.

Q. The arrest—I have mentioned 1:04 p.m. because I think I correctly repeat what you said, that was the time approximately of the arrest?

A. Approximately, yes.

Q. You did say 1:04, didn't you? [103]

A. 1:04, to my watch, when we got the orders.

Q. All right. Now, at the time that you took up your watch there that morning, of course you were acting pursuant to instructions of some superior, weren't you?

A. Yes, sir.

Q. And from where did you and these other members of the FBI come? What city?

A. From San Francisco, of course.

Q. Approximately when did you leave San Francisco?

Mr. Schnacke: I will object to that as not being material to any issues in this case.

The Court: It is pretty far afield, isn't it? What difference does it make?

Mr. Gladstein: (Inaudible to the Reporter.)

(Testimony of Roy L. Erickson.)

The Court: Unless it has some bearing on the credibility or something of that kind. I will overrule the objection.

The Witness: Actually, I think I left the city, it was, as I recall it, real early in the morning. I was instructed—I was conducting an investigation elsewhere, on the Peninsula, and was instructed to proceed on up to Twain Harte, being in a radio car.

Mr. Gladstein: Q. But my question was, approximately when did you and these other men you have named leave the city area to go to Twain Harte?

A. Well, I would say we left probably about 4:30. Between [104] 4 and 5 p.m. on the 26th day of August.

Q. That was the day before?

A. Yes, sir.

Q. I see. Now, were you told whom you were looking for or searching for or to arrest?

Mr. Schnacke: I object to that as being immaterial. I don't think the instructions that this agent had in any way bear upon his testimony on direct examination.

Mr. Gladstein: I will withdraw the question.

Mr. Schnacke: The question was, what he saw.

Mr. Gladstein: Q. Whom were you looking for?

A. We were looking for what we commonly have been calling "communist fugitives".

Q. Anyone by name?

A. No, not in particular.

(Testimony of Roy L. Erickson.)

Q. Now, you mentioned yesterday that during the course of your vigil there—. No, withdraw that.

You mentioned after the arrest you had some fingerprint cards of some kind, do you recall?

A. Yes.

Q. The fingerprint cards of what person or persons?

A. I had with me a complete set of the identification order cards, as I called them, on all of the so-called communist fugitives.

Q. Well, how many? Just give me a number.

A. Seven.

Q. You had seven cards? A. Yes.

Q. You had no card for Shirley Kremen, did you? A. No.

Q. You had no card for Patricia Blau, did you?

A. No, sir.

Q. You had no card for Carl Ross?

A. No, sir.

Q. And you had no card for Sam Coleman?

A. No, sir.

Q. I take it you had a card for Robert Thompson? A. Yes.

Q. Did you have a card for Sidney Steinberg?

A. Yes, sir.

Q. Did you take with you photographs of any kind?

A. Photographs appear on the card, yes.

Q. Then the very card that had the fingerprints also had photographs? A. Yes, sir.

Q. I take it you took all those with you when

(Testimony of Roy L. Erickson.)

you left in the late hours of the afternoon of August 26th? A. That's right.

Q. By the way, were you, Mr. Erickson, in charge of this group of agents whose names you have given us? [106]

A. Well, I don't think anyone was in charge. We were instructed to go there as a group, that is all.

Q. All right. It is true, then, that you had no photographs with you of those defendants whom I have named in my earlier question, that is, Shirley Kremen, Patricia Blau, Carl Ross and Sam Coleman? A. That's right.

Q. Now, you have testified that about 1 o'clock or 1:04 when you got instructions to make an arrest, an automobile or several automobiles were coming up toward the driveway of the house, is that right? A. That's right.

Q. And those cars contained agents of the FBI?

A. Yes, sir.

Q. And how many such cars were there?

A. There were five.

Q. How many agents altogether were there, excluding or including the five you have told us about?

A. Well, on my best recollection, reviewing the whole thing there were around 15 or 16 agents and one woman who came as a matron.

Q. Where did she come from?

A. She came from our San Francisco office.

(Testimony of Roy L. Erickson.)

Q. Did you put in a call for a matron to be sent?

Mr. Schnacke: Oh, I object to that as immaterial. What [107] relevancy does that have to anything this witness has testified?

The Court: Sustained.

Mr. Gladstein: Q. The matron, I take it, was brought so that a woman could conduct a search of Mrs. Kremen?

Mr. Schnacke: I object to that question as calling for an opinion and conclusion of the witness.

Mr. Gladstein: If he doesn't have any knowledge of it, he can say so, Your Honor.

The Court: Well——

Mr. Schnacke: (interposing) Why she was brought isn't material. She was there.

The Court: The objection is on the basis of the immateriality.

Mr. Gladstein: I am trying to establish the time, if Your Honor please, when it was determined to make an arrest of Mrs. Kremen, and I think that time can be elicited by establishing the time when an order was—when the fact was established that a matron was to be brought there.

Mr. Schnacke: I do not think the state of mind of the arresting officers or when they decided to make an arrest is material.

The Court: I am inclined to go along with you on that. Doesn't make any difference whether they have good, bad or indifferent motives. The only

(Testimony of Roy L. Erickson.)

thing that matters is what [108] happened. I will sustain the objection.

Mr. Gladstein: Q. Who was the matron?

A. Mrs. Elizabeth Kranke—K-r-a-n-k-e.

Q. I take it she is connected with the staff of the FBI here in San Francisco?

A. Yes, she is.

Q. When the automobiles came up to the premises, various agents immediately got out of the cars, did they not? A. Yes, sir.

Q. Did they or some of them draw firearms?

A. Yes, we all did.

Q. And directed them at the defendants?

A. "Directed"? I wouldn't call it "directed". We had them in our hands ready for any eventuality.

Q. And they were kept pointed, let's say,—or withdraw that. They were kept drawn, were they, for some time?

A. They were drawn until what we call submission to arrest, which was the time of handcuffing.

Q. There wasn't any effort on the part of anybody to avoid submission to arrest, was there?

A. No, sir.

Q. There wasn't any effort on the part of anyone to prevent the arrest of some other person there, was there? A. No, sir.

Q. And there was no effort on the part of anyone to escape [109] or seek flight of any kind, was there? A. No, sir.

(Testimony of Roy L. Erickson.)

Q. Now, you have told us that the senior agent, I think you called him, or the officer in charge, or the agent in charge, addressed the people who were arrested and, among other things, said that they need not say anything, something of that sort, is that right? A. Yes, sir.

Q. And of course—withdraw that.

And I think you also said that the defendants did remain mute? That is so? A. Yes, sir.

Q. You testified yesterday that there came a time while you were watching the house when you became satisfied that one of the persons there was Robert Thompson, am I correctly quoting what you said?

A. No. We were satisfied that two of the people there were fugitives.

Q. When did you become satisfied of that?

A. Well, I—. It was after noon. It was possibly around 12 o'clock or shortly thereafter.

Q. And what was it that satisfied you?

A. Well, visible characteristics as we had been studying them.

Q. Is it fair to say that what satisfied you was that from [110] your observations through binoculars and your examination of the fingerprint cards and photographs that were on those cards, you reached the conclusion that two of the persons there sufficiently answered the description of the photographs on those two cards? Is that about right?

A. Well, that is approximately right. However,

(Testimony of Roy L. Erickson.)

one of the agents with us had seen them in person previously.

Q. Who was that?

A. Mr. Joseph McCann.

Q. Whom had he seen in person?

A. I believe he had seen both of them. I know he had seen Mr. Steinberg.

Q. He so advised you?

A. I knew it, yes, sure.

Q. When did you acquire that knowledge?

A. Oh, I probably knew that for years, couple of years.

Q. Did Mr. McCann accompany you—withdraw that.

If I understood your testimony correctly, Mr. Erickson, Mr. McCann accompanied you from San Francisco the prior day and was with you during the period of surveillance the following day?

A. I didn't say that, but he did, yes.

Q. It is true? A. Yes.

Q. How long, approximately after daybreak was it when [111] Steinberg first came out of the house and was visible to you?

A. We did not see him come out of the house or into the vicinity until just about noon.

Q. And did Mr. McCann say anything to you to the effect that he recognized Steinberg as the person who was coming out of the house?

A. Between that time and 12:30, yes.

Q. Had Mr. McCann, to your knowledge, been at the house prior to the 27th? A. No.

(Testimony of Roy L. Erickson.)

Mr. Schnacke: I object to the question as being immaterial. Well, I think the answer was given before I completed my objection. I withdraw the objection.

Mr. Gladstein: Q. The answer was that he doesn't know or that Mr. McCann was there?

A. To my knowledge, he was not.

Q. Do you have knowledge who, if anyone, of the agents was at the house the previous day?

Mr. Schnacke: I will object to the question as being outside the scope of the direct examination, and immaterial to the issues of the case, and not a matter as to which any of the testimony of this witness bears.

The Court: Sustained.

Mr. Gladstein: Q. Now, after the—. By the way, Mr. Erickson, in giving your testimony yesterday concerning these [112] documents that were identified by you, you testified that particular ones came from a briefcase, expansion briefcase, that others came from some other briefcase, was it?

A. Yes. A small zipper style case.

Q. Small zipper style case? Some came from that, some came from a suitcase, some came from one of several boxes, and so on? A. Yes.

Q. I take it you made a report or record of the sources from which each of these documents was taken?

A. Well, we made a notation as to where each came when I removed them from the box.

Q. Who made the notation? A. I did.

(Testimony of Roy L. Erickson.)

Q. All right. And I suppose it is true, isn't it, that after the lapse of so many months you resorted to an examination of those notes or some report to refresh your recollection, didn't you, before you took the stand?

A. No, I haven't referred to any notes, reports, or anything as such, no.

Q. Well, we have all observed that while you were testifying you made no reference to any report or to any notations, as such. But my question was, did you before taking the witness stand, for the purpose of refreshing your recollection, examine the contents of a report, reports, or record or notations? [113]

A. No, sir.

Q. So that all the testimony that you gave yesterday was solely and exclusively from a recollection of what took place on the 27th of August of last year?

A. Yes, plus the fact that, as I so testified, I removed those documents from the box they originally came in and turned them over to the United States Attorney, which was naturally of more recent date.

Q. Do any of these documents that you were asked to identify yesterday bear any notation or mark or contain anything that would indicate whether they were taken by you from a briefcase or from a box or from a suitcase or some other source?

A. They do, yes.

Q. What is the method?

A. Excuse me?

Q. What is the method?

(Testimony of Roy L. Erickson.)

A. As you will notice, on the original there is a letter near my initial and the date, on some of them. On others there is no letter. The letter or absence of the letter indicates to me the source from which the original came.

Q. Would you be good enough to explain that——

A. Sure.

Q. ——by reference to any of the exhibits that have been identified by you?

A. The Government's Exhibit 6 contains in the lower lefthand [114] corner my initials "RLE", and the date "8/27/53". And below that is the letter "L". That letter L indicates to me that it came from the search I conducted of the person of Mr. Ross. I did that for filing purposes, for organization purposes of the exhibits.

Q. You gave him the letter "L" at that time?

A. When I placed it—. At that time? No.

Q. Well, you didn't put your initials on that document at the time you took it off his person?

A. At the time I—yes, I did.

Q. Are they the same initials that the document now bears?

A. Yes.

Q. May I see the one that you have reference to?

A. Sure. My initials "RLE" and "8/27/53", they were placed on there——

Q. At that time?

A. At that time, yes.

Q. Then I take it from your testimony that the letter "L" which appears below the date and

(Testimony of Roy L. Erickson.)

your own initials was added at some later date, is that right? A. Yes, sir.

Q. When?

A. That was added when I had placed them, all the documents, in separate folders in a lettering system in accordance with the box or suitcase or briefcase from which they came. Then, [115] in order that I could find some way of remembering it, I placed the letter on there.

Q. Where was that done?

A. In the office of the United States Attorney.

Q. Well, then, is that true about all of the documents that bear either a letter or some other mark to indicate by a symbol that you understand the source from which you took them?

A. Yes, sir.

Q. When did this occur, this marking in the United States Attorney's office?

A. That occurred last week. I am quite sure it was the 5th or 6th of the month.

Q. At the time that you did this, in what kind of container were these various exhibits? Were they in that file such as we have seen Mr. Schnacke handling? A. That's right.

Q. Was there anything in the file or on the exhibit itself prior to your placing a letter or other symbol on it that would indicate the source from which it came, that is, whether a suitcase, box, briefcase, or what?

A. That was identifiable in two ways.

Q. What were they?

(Testimony of Roy L. Erickson.)

A. One, I prepared that folder which Mr. Schnacke has.

Q. Yes. [116]

A. Two, I in preparing folders, placed them in the folders and placed a letter on the folder so I would know. That letter, for example, on Government's Exhibit 6 was the same, the letter "L".

Q. Well, let's take that as an illustration of your testimony. As I understand you now, you have told us that the letter "L" that appears on the exhibit itself numbered 6—— A. Yes?

Q. ——had a corresponding letter upon the folder that you or the United States Attorney provided for its being contained in?

A. Yes, sir.

Q. That was one. And what was the other method you say you used?

A. The other method was, when I had these photostated I placed on the photostat, for the use of the United States Attorney in his following the matter, a small 3 by 5 slip of paper with a notation. That was stapled to the photostat only.

Q. That was on these notations?

A. The source from which it came.

Q. Was that by means of a letter or a statement?

A. It was just a small typed note, that is all.

Q. And that was as to each exhibit?

A. That is right. [117]

Q. And what happened to the small typed note?

A. That was placed only on the copies, as I

(Testimony of Roy L. Erickson.)

said, the photostatic copies used for study by the United States Attorney.

Q. Are you referring to the same kind of—to the photostats that counsel has used here?

A. Yes.

Q. But, Mr. Erickson, those don't bear any words, any statements, any assertions on them to indicate the source from which they come, do they?

A. No, but I placed it on there when I took them from the original source, that is, the box, the suitcase or briefcase.

Q. Are you now referring to the time you were actually in the house?

A. I am referring to the time when I removed them from the box, suitcase or briefcase.

Q. When did that occur?

A. Oh, that occurred at a different time for each exhibit since last August.

Q. Then is it correct to say that the documents that you took from the house or cabin up there at Twain Harte did not remain at all times precisely in the box or other type of container in which you originally found them? That is correct, isn't it?

A. No. That is correct only to this extent: they did not [118] remain there after I turned them over to the United States Attorney, nor were those in the box at the time I turned over the photographs or had the laboratory examine them.

Q. Let me ask you this: isn't it a fact that these documents that you have identified, you

(Testimony of Roy L. Erickson.)

simply picked up and took with you in bulk or in mass from the premises on the day of the arrest?

A. Yes, sir.

Q. And isn't it true that you and the other agents of the FBI, indeed, removed, in substance, everything that was on those premises except pieces of furniture or matters of that kind that appeared to be a portion of the house?

A. Everything was removed except that which the realtor handling the house identified as the property belonging to him.

Q. When did that occur? A. Pardon?

Q. When did it occur that he identified things that were not removed?

A. I didn't handle that. I don't know.

Q. But it was some time other than the day of the arrest, or at least after you left the premises after the arrest?

A. Probably the next day, something like that.

Q. Was anything removed from the premises—withdraw that.

Up to and including the time when you and the other [119] agents took all of the defendants away from the premises on the 27th, did you or they take with you any of the contents of the house, papers, documents, personal belongings, and so on?

A. I took all of the contents of the house of that type with me when I left, yes.

Q. Well, perhaps my question was ambiguous. I would like to put it differently.

I understood you to say that some time after you

(Testimony of Roy L. Erickson.)

left an effort was made to find out from the realtor what belonged to the house, and that you left that and that everything else was removed, is that right?

A. Yes, sir.

Q. But that occurred after the 27th of August, and I think you said probably the next day?

A. I don't know.

Q. Wasn't that what you said?

A. Yes, that is what I said.

Q. I don't want to pin you down to whether it was one day after or two days after. It doesn't make any difference. I just want to make it clear if it is true you had all gone and dispersed from there and taken the defendants into custody, and it was some time after that, upon verifying from the realtor what belonged to the rest of the house, you then took all the other things, that is right?

A. The other things, that is right.

Q. What things did you take?

A. I took with me all of the boxes, suitcases and briefcases containing the documents I have testified about. I took with me the material that the—those papers which were in the two automobiles. And I took with me the mimeograph machine, I think. And that is all.

Q. To your knowledge, did you leave any papers, documents or materials of the general nature of the exhibits that have been offered here, or did you take those all with you?

A. To my knowledge, I took them all.

Q. All right. Prior to taking them that date,

(Testimony of Roy L. Erickson.)

did you, in the presence of the defendants, or any of them, or after they had left, make any examination or search through the documents and papers?

A. Would you repeat that?

Mr. Gladstein: Yes. Would you read the question, Mr. Reporter?

(Question read by the Reporter.)

Mr. Schnacke: I suggest that question is ambiguous, Your Honor please.

The Court: It is a little complicated.

Mr. Schnacke: How could it have been done in the presence of the defendants after they had left?

Mr. Gladstein: It is the condition, if the witness [121] remained there after they had left for a time. But I will accept the criticism and change it.

Mr. Gladstein: Q. I am trying to find out, Mr. Erickson, if your first search through and examination of these various papers and documents that you took occurred after you had taken them all from the house and brought them to your office in San Francisco, or whether any search and examination occurred at the house?

A. The first search was made at the house.

Q. You made that? A. Yes, sir.

Q. Did you remove any of those documents or papers from their containers?

A. No, sir. Well, excuse me. If I removed them, I removed them to read them or glance at it and put it back in the package.

Q. I see. So that you brought them—it is your testimony you brought them with you to your office

(Testimony of Roy L. Erickson.)

in San Francisco for a more detailed study and examination and search? A. That is right.

Q. And at the time you brought them, you brought them in the very same containers in which you found them on the premises?

A. Yes, sir.

Q. All right. Now, did you swear out a warrant or complaint [122] against any of the defendants?

A. Did I personally?

Q. Yes. A. No.

Q. Did you cause one to be done?

A. No.

Q. Do you know whether one was done?

A. Complaints were filed, yes.

Q. Where?

A. I believe they were filed here in San Francisco.

Q. When? A. The night of August 27th.

Q. With whom?

A. To my own knowledge, I would say I don't know.

Q. It was with the United States Commissioner, wasn't it? A. I presume so, yes.

Q. That is Commissioner Karesh, isn't it?

A. Yes, sir. [123]

Q. Can you tell us from your own knowledge of what the defendants were charged with in that complaint?

Mr. Schnacke: It has already been testified that this witness was not present when the complaint was filed.

(Testimony of Roy L. Erickson.)

The Court: If you want the records, you can get them. You do not need to take time asking somebody else what the records show.

Mr. Gladstein: Q. Mr. Erickson, you told us that certain photographs that you took represented the appearance of the house from certain angles or places that you have indicated, photographs that you took that very day. A. Yes, sir.

Q. Did you take any photographs of the area immediately surrounding the house?

A. I believe the photographs that you are referring to show the area surrounding the house.

Q. Let me put it this way: Are the five—I think it was five that were offered, and if I am wrong about the number, whatever the correct number is—of the photograph that you identified here yesterday or the day before, all of the photographs that were taken of the premises?

Mr. Schnacke: I will object to that as being immaterial, if Your Honor please. I do not know what difference it makes whatever other photographs he may or he may not have taken. These are the only photographs that were taken and the only [124] photographs to which he testified. I suggest it is outside the scope of the direct examination and immaterial.

The Court: If there are other photographs, it may possibly be material. Overruled.

The Witness: I took additional photographs. I believe the rest are of the interior of the house.

Mr Gladstein: That is what I was leading to.

(Testimony of Roy L. Erickson.)

Mr. Gladstein: Q. You did take photographs of the interior? A. Yes, sir.

Q. Did you take photographs of the interior of the house before moving or touching or displacing any of the contents, particularly the documents, brief cases, and so forth? A. Yes.

Q. Did you take photographs of each of the rooms—in other words, the entire interior of the house?

A. I tried to get a shot, a so-called shot of each room, yes.

Q. Were those photographs developed?

A. Yes, sir.

Q. Did you turn them over to the United States Attorney or do you have them?

Mr. Schnacke: I have them. I have sent upstairs to get them. If you care to examine them and introduce them, you certainly may.

Mr. Gladstein: I will go to another thing. [125]

Mr. Gladstein: Q. Are those photographs Mr. Schnacke has just referred to, and which you took of the interior, were they taken before any of the exhibits, documents, contents of the house were touched or moved?

A. They were taken—yes. I would have to qualify that only to the extent that while I was taking those pictures, during that period there was the natural, normal amount of confusion. Some of the persons had been changing clothes and things like that; individual agents handling the individual search of the person, or recovering material for

(Testimony of Roy L. Erickson.)

that person, may have been moved. Other than that, no.

Q. Documents, brief cases, or the cartons——

A. They would still——

Q. I beg your pardon?

A. They would not have been moved.

Q. You testified that typewriters were sent to Washington, D.C. A. No, I did not.

Q. Sent somewhere to a laboratory?

A. No, I testified that specimens of the type were taken from the typewriters for transmittal to the laboratory.

Q. I misunderstood you. And they were sent to Washington? A. Yes, sir.

Q. Were these the same specimens that you referred to yesterday? [126]

Q. When they were returned were they accompanied with some report of any kind?

A. I do not remember whether a report accompanied them or came separately.

Q. The report did come?

A. I presume so. I wouldn't have personally handled it.

Q. You had no personal knowledge of any such report, the contents of it?

A. The contents. I probably wouldn't have personal knowledge of it.

Q. Did you yourself send the specimens?

A. I sent them, yes.

Q. Did you send some document of inquiry concerning them? A. Yes, sir.

(Testimony of Roy L. Erickson.)

Q. What was the inquiry?

Mr. Schnacke: I object to that as immaterial and as an unreasonable inquiry into the techniques of the Federal Bureau of Investigation.

Mr. Gladstein: I am not concerned with the techniques of the Federal Bureau of Investigation. I am simply concerned with cross examining on a subject that the witness himself was asked to give testimony on and which he did.

Mr. Schnacke: On the further ground that it is hearsay.

The Court: It is not within the reach of the cross examination, I do not think. The witness was only interrogated [127] as to whether he sent these documents on. That is all. I suppose the Government may follow it up. I do not know. They may follow it up with something else.

Mr. Gladstein: Do I understand Your Honor will not permit me to examine as to the——

The Court: Your question now is what inquiry the witness made as to what he wanted to find out about the writing. I will hold that that is not material cross examination.

Mr. Gladstein: Q. To get back a moment to photographs, not the ones I asked you about, did you observe that other agents besides yourself were taking photographs at and immediately after the time of the arrest?

A. No, I handled all the photography.

Q. Exhibits 2 and 3 are photographs. Did you take all of them, both of them? A. No, sir.

(Testimony of Roy L. Erickson.)

Q. Any of them?

A. Yes, I took the black and white.

Q. That is Exhibit 3? A. Yes, sir.

Q. Do you know when and where Exhibit 2 was taken?

A. Yes, sir, it was taken on Alcatraz Island on the day following the arrest, August 28th.

Q. That is No. 2? A. Both of them. [128]

Q. Maybe I am confused. There are three separate photographs on Exhibit 2. A. Yes, sir.

Q. Those are the ones to which you just referred in saying they were taken on Alcatraz?

A. Yes, sir.

Q. I understood you to say concerning the photograph on Exhibit 3, that you took that?

A. I did.

Q. When?

A. On Alcatraz, on August 28th.

Q. Then you made no photograph of the man whose photograph is seen in Exhibits 2 and 3 at the time of arrest?

A. I took the picture but it did not come out.

Q. You photographed each of the persons you found there? A. Yes.

Q. And fingerprinted each of the persons you found there?

A. I assisted in the fingerprinting.

Q. And the answer is as to all of them?

A. As to all of them.

Q. Exhibit 4, that is, photographs of the defend-

(Testimony of Roy L. Erickson.)

ant Steinberg, you took those at the cabin or at the house, didn't you? A. I did.

Q. No. 5 you may look at if you like and tell us where did you find that? [129]

A. As I testified on direct, I found that in the pockets of Carl Ross.

Q. Is there a mark on there that indicates that?

A. Yes, above my initial, the letter L.

Q. Does the letter L refer to things taken from the person of Ross? A. Yes, sir.

Q. What letter did you use for anything taken from the person of any other defendant?

A. I didn't take anything from the person of any other defendant.

Q. What other letters besides the L did you use in identifying these matters?

A. I used the letter M for one of the boxes at the foot of the bed, in the bedroom above the living room. I used the letter N for another, the letter Q for another. I used the letter O for the box that was on the dresser in the bedroom above the living room, the letter P for the box that was in the closet at the head of the stairway, the letter R for the zipper brief case on the dresser in the bedroom above the living room, the letter S for the suitcase in the closet in the bedroom above the living room, the letter T is for the suitcase that was on the bed in the bedroom above the living room, and I used no letter for the mass of material that was found in the expansion brief case on the bed in the bedroom [130] above the living room.

(Testimony of Roy L. Erickson.)

Q. No. 6 I think you said you found on the person of the defendant Ross? A. Yes.

Q. That is the list containing eggs and food-stuffs, is that so? A. Yes.

Q. Examine No. 7 if you will, Mr. Erickson. Where did you find that?

A. On the person of Mr. Ross.

Q. And No. 8? No. 8 you found in an automobile, didn't you? A. Yes, sir.

Q. I will ask you to look at the balance of these. Am I right in saying that commencing with the top exhibit, No. 9, that the remainder of those documents, and to the extent that they are documents—I think there are some photos as well—but the remainder of the documents there were taken not from the person of Ross or anyone else, is that right?

The Court: Is that up to No. 30?

Mr. Gladstein: All the remaining ones including those for identification. They go far beyond No. 30, Your Honor.

The Court: That goes to 77.

Mr. Gladstein: Perhaps this would be, if it suits Your Honor's convenience——

The Court: I made a record of it at the time. Do you [131] want to go through all of these again?

Mr. Gladstein: I only asked him a question.

The Court: He testified in the case of each one just where he found it, and my recollection is each one came from some box or suitcase or brief case,

(Testimony of Roy L. Erickson.)

and that he did not testify that any of them came from the person of Rasi. That was your question.

Mr. Gladstein: Or any of the other persons there. That was my question.

The Court: Or any of the other persons there.

The Witness: There were two or three documents I did take from the person of Mr. Ross.

The Court: Q. Included in this list?

A. Yes.

Q. Look through them.

A. Exhibit 7 is here. That was taken from his person.

Mr. Gladstein: I thought we commenced with No. 9, Mr. Erickson.

A. I have 7 here. I am sorry. The rest, the only way I can do is to check. I don't recall the identification number of the document, specifically where it came from, without looking at the document.

Mr. Schnacke: We will stipulate, Your Honor, after examining the record, that it is a fact that all exhibits from 8 on were taken from sources other than the person of someone [132] in the cabin.

Mr. Gladstein: That is satisfactory.

The Court: Q. Does that accord with your recollection pretty well?

A. To the best of my recollection, yes.

The Court: I made a note of that at the time the exhibits were entered. I could have made a mistake.

Mr. Schnacke: No. 8 was taken from the Chevrolet, 9 from the Ford, and so on.

(Testimony of Roy L. Erickson.)

Mr. Gladstein: One qualification I am sure Mr. Schnacke should agree to, and I think it would accord with the witness' recollection: There is an exception to the witness' testimony. For instance, I notice Exhibits 29 and 30, which represent his own typewritten specimens.

Mr. Schnacke: They were not taken from the person of anybody found at the cabin.

Mr. Gladstein: Q. Examine if you will No. 31 for identification, Mr. Erickson. Where did you find that?

A. 31? In a box on the dresser in the bedroom above the living room.

Q. Do you know to whom it belonged?

A. Do I know? No.

Q. Do you know to what use, if any, it was ever put?

Mr. Schnacke: I will object to that as calling for an opinion and conclusion of the witness. [133]

The Court: It does call for his opinion and conclusion. I think you could reframe that, however, and ask him if he knows of his own knowledge what was done with it, except what he did with it, something like that. I'm just trying to avoid——

Mr. Gladstein: I will adopt Your Honor's form of questioning.

Mr. Gladstein: Q. Mr. Erickson, except for what you did with the document after you took it, do you know what was ever done with it prior to that time?

A. No, sir.

Q. Or by whom it was known to or used by?

(Testimony of Roy L. Erickson.)

A. No, sir.

Q. Or when it came into existence?

A. No, sir.

Q. Or where? A. No, sir.

Q. Or when it first came to the house of Twain Harte? A. No, sir.

Q. Or by whom it was brought there?

A. No, sir.

Q. Or where it came there through the mail?

A. No, sir.

Q. Did you ever ascertain or do you know if the contents of this exhibit were ever known to my client, Mrs. Blau? [134] A. No, sir.

Q. Or Mrs. Kremen? A. No, sir.

Q. Or any of the other persons arrested there?

A. No, sir.

Q. If I asked you the same series of questions concerning each of the exhibits numbered from 32 on, including 77, would your answers be the same?

A. I would say yes.

Mr. Gladstein: Would Your Honor consent to a recess at this time, a morning recess? I think I have only a few questions of Mr. Erickson and I should like to check my notes. I may have concluded my examination, but I would like to consult with Mr. Leonard?

The Court: All right. I do not know whether I did tell the jury before, but we make a practice of taking a brief recess in the mid-morning and mid-afternoon. During those periods of your absence from the courtroom during recess, as well as when

(Testimony of Roy L. Erickson.)

you go home at night or come back in the morning or at noontime, you are still under the same admonition not to discuss the case among yourselves or let anybody else talk to you in any manner, shape or form or express an opinion until the matter is submitted to you.

We will take the usual mid-morning recess at this time.

(Recess.) [135]

Mr. Gladstein: Shall I proceed, Your Honor?

The Court: Yes.

Mr. Gladstein: Q. Mr. Erickson, I have been handed during the recess photographs that Mr. Schnacke brought down, and which I will ask you——

Mr. Gladstein: I suppose these should be marked for identification. I guess as a group would be satisfactory, Your Honor.

The Clerk: Defendant's exhibits, Mr. Gladstein?

Mr. Gladstein: Yes.

(Thereupon group of documents referred to above were marked Defendants' Exhibit A for identification.)

Mr. Gladstein: Q. I hand you a group of photographs that the Clerk has marked Defendants' Exhibit A for identification. Do you recognize those as photographs that you took and about which you have given testimony, any you took of the inside of the house at Twain Harte? A. Yes, sir.

Q. Are they all of the photographs that you took of the inside of the house?

(Testimony of Roy L. Erickson.)

A. I believe they are, yes.

Q. Now, the one on top——

Mr. Gladstein: I suppose these should be marked if I am going to ask questions separately about some of them. I [136] believe they should be given numbers 1, 2, 3, and so forth.

The Court: Suppose you have them marked in the order in which they are fastened together?

Mr. Gladstein: All right, I think I will ask the Clerk to mark them on the back or on the corner so there will be no confusion in the record.

The Clerk: The first photograph, Mr. Gladstein, is marked A, and the others are marked A-1 to A-14, inclusive.

Mr. Gladstein: Thank you very much.

(Thereupon group of photographs marked Defendants' Exhibit A for identification were individually marked Defendants' Exhibit A and Defendant's Exhibit A-1 through A-14 for identification.)

Mr. Gladstein: Q. The one on top is marked A, Mr. Erickson. What is that a photograph of?

A. That is a photograph of the living room on the first floor, taken from the dinette area.

Q. And at the time that you took it had anything, to your knowledge, been disturbed in the area that is shown in the photograph?

A. The only thing that may have been disturbed was, as I said, during changing into clothes, and so forth, by the defendants prior to departure. Otherwise, no.

(Testimony of Roy L. Erickson.)

Q. But in that picture itself, as you examine it, would you [137] say that that correctly represents substantially the appearance of that part of the house at the time the agents first entered it?

A. Yes, sir.

Mr. Gladstein: May I hold this up for the jury to look at, Your Honor?

The Court: Certainly.

Mr. Gladstein: Ladies and gentlemen, this is a photograph of a portion of the living room (displaying exhibit to the jury).

Mr. Gladstein: Q. Now, A-1. What does that represent, or what is it a photograph of?

A. That is a photograph of the living room area taken from the opposite corner as the previous one, or from the corner leading from the bath.

Q. Is that a picture of a portion of the same room? A. That's right.

Mr. Gladstein: Ladies and gentlemen, this is the portion of the living room that Mr. Erickson has just testified to (displaying exhibit to the jury).

Mr. Gladstein: Q. Now, the next photograph is marked A-2. What is that a photograph of?

A. That is a photograph of what on the chart would be marked the utility room, taken from the entrance itself. In other words, you open the door and that is what you see looking in. [138]

Mr. Gladstein: I now hold that up, ladies and gentlemen (displaying exhibit to the jury).

Mr. Gladstein: Q. Now would you look at Exhibit 3 and tell us what this is a photograph of?

(Testimony of Roy L. Erickson.)

A. A-3 is a photograph taken from the living room into the dinette area, showing the doorway on the extreme left, the dinette area with table, chair, and the box containing the mimeograph machine.

Q. And was that taken prior to and without anything in that area being disturbed by any of the agents?

A. That is right, other than what I have mentioned before, might have been disturbed.

Q. And I neglected to ask you if the prior photographs that you have already told us about, if it is true about them, also that nothing in the area was disturbed by the agents?

A. Yes, sir.

Mr. Gladstein: This, ladies and gentlemen, is the area that the witness has just identified (displaying exhibit to the jury).

Mr. Gladstein: Q. What did you say that represented Mr. Erickson?

A. It is a photograph of the dinette area of the house taken from the living room, showing on the extreme left the entry to the portion, the table in the dinette, with the box with the mimeograph machine. [139]

Q. That is the box that contained the mimeograph machine? A. Yes, sir.

Q. And over on the other side, those are phonograph records, are they not?

A. They were albums of phonograph records, yes, sir.

(Testimony of Roy L. Erickson.)

Q. And the next one, Exhibit A-4?

A. This was taken when I was about to leave. As I recall, I had another film left in the pack, and there had been that camping equipment and fishing equipment, and so forth, near the wall of the dinette nearest the kitchen, and we had just placed it in a bunch so it could be placed within the confines of the photograph.

Q. Then, in other words, the things shown in this photograph were placed there by the agents? That is to say, for instance, a bottle—well——

A. It is slightly out of focus, yes.

Q. Apart from being out of focus, there is a carton marked "Budweiser"? A. Yes.

Q. And then there is camping equipment and fishing equipment? A. Yes.

Q. And there seems to be a bottle of some kind, right? A. Yes.

Q. And another bottle that looks like a liqueur bottle? A. That is right. [140]

Q. Am I correct that these things in this photograph, A-4, were taken from various parts of the premises and put together so that they could be within the compass and focus of your remaining film?

A. After I had completed taking the pictures, just before I left, those were in and around the kitchen area and dinette area there, and they were placed right along the wall nearest the kitchen area and dinette, for the purpose of taking the photograph.

(Testimony of Roy L. Erickson.)

Q. Yes. So that, in other words, the photograph itself, A-4, does not show these items therein exactly as you found them, isn't that right?

A. That is right.

Mr. Gladstein: I will hold that up for the jury (displaying Exhibit to the jury).

Mr. Gladstein: Q. What is the next one? A-5.

A. That is a photograph, the best I could do, from the bed in the bedroom above the living room side of the house into the closet area which I mentioned existing, and which contained several suitcases, one of which contained some documents. And the one which contained the documents is the one on the extreme left. You can just see it in the corner.

Q. Were there any documents in the other suitcase shown there? A. No, sir. [141]

Q. Were there any documents in what appears to be a field pack type? A. No, sir.

Mr. Gladstein: Ladies and gentlemen—watch me, Mr. Erickson—as I understand the witness, it is this portion of the suitcase shown in the corner that contained some documents.

The Witness: Yes.

Mr. Gladstein: Q. This picture taken, does it show the area and contents of it exactly as you found it before any agents disturbed it?

A. Yes, sir.

Mr. Gladstein: (Showing exhibit to the jury.) You may ask for these later to examine them in

(Testimony of Roy L. Erickson.)

greater detail, if you like. I am sure his Honor will permit that.

Mr. Gladstein: Q. The next is Exhibit 6.

A. That is a photograph taken from about the same position as the other one, of the dresser which is in the bedroom above the living room side of the house, and containing that box which was unmarked, and the zipper briefcase.

Q. Did the zipper briefcase contain any documents? A. Yes.

Q. That is the one you have referred to?

A. Yes.

Q. Does that photograph as it is shown there represent a [142] portion of the area you have described of those premises and what is shown there without any disturbing of those items or moving of them generally by the agents?

A. That is right, yes.

(Exhibit A-6 displayed to the jury.)

Mr. Gladstein: Q. The next is Exhibit A-7. What does that show?

A. That is the best I could do of a picture from the doorway leading into the bedroom above the living room side of the house, and trying to show as much as I could of that bedroom. It shows the bed, some clothing there, and on the extreme right-hand corner you can see the dresser. On the bed you can see one suitcase and one expansion type briefcase.

Q. What did the suitcase contain?

A. The suitcase contained some documents.

(Testimony of Roy L. Erickson.)

Q. And the briefcase is also the one you referred to as containing some documents?

A. Yes, sir.

Q. Did you find all the items, that is, the suitcase and the expansion briefcase in that photograph, exactly as the photograph shows?

A. Yes, sir.

Q. Without any prior disturbance or moving of any of the items by anybody, is that right? [143]

A. That is right, yes. Other than—on all of these I would qualify that. Other than what someone might have moved in changing into new clothes, or something of that kind.

Mr. Gladstein: Very well. This, ladies and gentlemen, is the photograph Mr. Erickson has just identified now, (displaying exhibit to the jury).

Mr. Gladstein: Q. The next one?

A. That is a photograph from the bottom of the stairway looking up into the head of the stairway and the closet I mentioned existing on the second floor at the head of the stairway. It shows clothing in there is about all you can see.

Q. And that photograph was taken prior to any of the articles shown in this photograph being disturbed by anyone?

A. That is right.

(Exhibit A-8 was displayed to the jury.)

Mr. Gladstein: Q. What is the next, sir?

A. This is a photograph from the doorway—the doorway to the bedroom on the kitchenside of the house, trying to show the condition of that room as best I could.

(Testimony of Roy L. Erickson.)

Q. Now, those articles and items shown in that picture, were they so placed there in that position without any prior moving or disturbance by the agents? A. Yes.

Q. You are positive of that? [144]

A. Unless, as I previously said, there was some change there when people changed into other clothing.

Q. How long after the defendants were placed under arrest did you make these interior photographs?

A. I made them after they were photographed—after the defendants were photographed and fingerprinted and before they actually left the scene, in the cars.

Q. Did you make these photographs before or after various items of clothing were taken from the house to enable the defendants to wear them in the course of the drive back?

A. Some of them may have been taken before some of the defendants did change. Some of them were taken after they changed.

Q. And can you tell us specifically about A-9, whether you took that photograph on the second floor before or after the room had been used for the purpose of changing clothes?

A. Well, to the best of my recollection it would have been taken after they changed clothes.

Q. And so the position of the various items, including particularly the things that are strewn all over the bed, that doesn't represent the way the

(Testimony of Roy L. Erickson.)

room looked before things were moved around in it after the arrest, isn't that right?

A. Oh, no. Yes, it represents the way the room looked when we arrived, except for what may have been dropped there, what may have been picked up in the changing of clothes. In other words, the material that exists there, as it exists [145] in that photograph, existed there when we arrived.

Q. You mean in the room?

A. In the room, yes.

Q. But not necessarily in the positions they are shown here to be, that is, on the bed, and so on, isn't that right?

A. If they were moved, they could have been moved minorly in someone changing clothes, brushing aside of clothes.

Q. What did you find in this carton or box, if anything?

A. That was empty.

Mr. Gladstein: I will show you, ladies and gentlemen, this last photograph (displaying Exhibit to the jury).

Mr. Gladstein: Q. The next photograph is A-10. Can you tell us what that depicts, if you will?

A. This is a photograph of the closet from the bed in the bedroom above the kitchen side of the house.

Q. And it shows in an undisturbed state the things you found there in that area?

A. Yes.

Mr. Gladstein: I will hold that up (displaying exhibit to the jury).

Mr. Gladstein: Q. Next is A-11.

(Testimony of Roy L. Erickson.)

A. This is a photograph of the kitchen taken from what would probably be the dinette area of the house.

Q. It shows it in the same condition in which you found it, without disturbance? [146]

A. Yes.

(Exhibit A-11 was displayed to the jury.)

Mr. Gladstein: Q. Now, I come to A-12. What is that?

A. That is a photograph of a pair of pants that was found in the living room by another agent, and it was taken because money was found in the belt.

Q. You found money in the belt? Who found the money in the belt? A. Agent Dunker.

Q. And the picture was taken, then, the trousers and the belt and the money contained in it—in the belt, that is—were arranged by an agent for the purpose to show those things, isn't that right?

A. Yes.

Q. The photograph as taken doesn't really show the correct appearance of the trousers and the belt as you found them, does it? A. No.

Q. This is what you might call a staged picture, is it not?

A. It was placed there to show the pants and the belt on which the pants were contained and the fact that money was in the belt.

(Exhibit A-12 was displayed to the jury.)

Mr. Gladstein: Q. And the next picture, sir, is A-13.

A. And this is a photograph I took after remov-

(Testimony of Roy L. Erickson.)

ing the [147] mimeograph machine from the box that was previously shown, and the opening of the box containing the items used in supplying the mimeograph machine.

Q. You had to move the items shown here from other portions and bring them together in order to take this photograph, did you?

A. Yes. The mimeograph——

Q. What was your answer?

A. Yes. The mimeograph machine was in the box. I removed it to photograph it.

Q. And the paper, you had to bring that to this area on there and put these items in proximity to each other so that you could get them all into one film, isn't that right? A. Yes.

Q. Do you remember from where you obtained and brought the paper or the box containing the paper?

A. They were sitting just next to the box containing the mimeograph machine on the table.

Q. So, in other words, they were taken off the table and unwrapped and placed on the floor?

A. Yes, sir.

Q. That too, then, is a staged photograph, isn't that right? A. Yes, sir.

(Exhibit A-13 displayed to the jury.)

Mr. Gladstein: Q. A-14 is the last of the photographs, [148] and what does it portray?

A. This is a photograph of the desk in the living room, taken from the opposite side of the living room, showing generally the contents in there of the

(Testimony of Roy L. Erickson.)

desk, and I think you can see the typewriter down under the desk. That is about all.

Q. When you found that desk were the drawers like that, or did you or some other agent open the drawers so you could get a photograph that showed the contents as well as the desk?

A. The middle one was partly open. However, I pulled it out to show the contents.

Q. By the way, can you tell—you can tell us what the contents were? What were they?

A. Maps, phonograph records, some papers, documents, cards. That is about all.

Mr. Gladstein: I offer these in evidence, if Your Honor please.

The Court: Very well, they may be admitted.

(Thereupon photographs previously marked Defendants' Exhibits A through A-14 for identification were received in evidence.)

Mr. Gladstein: That is all.

The Court: They should have been admitted first, but that is all right.

Mr. Gladstein: I am sorry. [149]

Redirect Examination

Mr. Schnacke: Q. Mr. Erickson, the question was raised whether *the* fingerprinted and assisted in the fingerprinting of various of the persons found in the cabin. It is my recollection that you said you did, is that right? A. Yes, sir.

Q. I will show you four cards appearing to bear

(Testimony of Roy L. Erickson.)

fingerprints and ask you if you can identify those and tell us what you know about them?

A. Yes, Special Agent Howard Richardson and I together fingerprinted each of the defendants at the cabin. These are the prints we together took of Shirley Kremen, Carl Ross, Samuel Coleman and Robert Thompson.

Q. I notice that three of these cards are signed by Agent Richardson and one of them by yourself. I understand, nonetheless, you were present and cooperated in the taking of these prints, is that correct?

A. Yes, it was a small table we were working on. One had to hold the card while the other was rolling the prints.

Q. I will show you the first of the documents to which you refer and ask you if that document contains the true fingerprints of Shirley Kremen?

A. It does.

Q. Shirley Kremen is the young lady sitting at the defendants' table who has previously been described. [150]

Mr. Gladstein: Excuse me for interrupting. I would like to have leave to move to strike the prior answer and make an objection which may be deemed to have been made prior to the answer. I think the question called for his opinion and conclusion as formulated. I may be mistaken about that. If he says that he identifies that as something he saw taken from a defendant, that is one form of question; otherwise——

(Testimony of Roy L. Erickson.)

The Court: That is what he asked him.

Mr. Schnacke: I asked him if they represented the true fingerprints of the defendant Shirley Kremen.

The Court: Q. You saw her put her fingerprints on the card, is that it?

A. I rolled them on the card, yes.

Mr. Gladstein: That card. That is all I wanted to know.

Mr. Schnacke: I ask that that document be admitted into evidence as Government's next in order solely for the purpose of establishing the true fingerprints of that defendant, and without offering it as to any other matter on the card other than the name of the defendant and the fingerprints.

Mr. Gladstein: Your Honor, I think they are incompetent, irrelevant and immaterial at this point. I think they are objectionable.

The Court: It is a circumstance, it is a fact that we cannot evaluate until we have some other facts. They cannot put everything in all at one time. [151]

Mr. Gladstein: I understand that, but I should like to protect the record for Mrs. Kremen. I think it is not appropriate without some proper foundation being laid, and it is prejudicial. I object to it.

Mr. Schnacke: There has already been testimony that the prints were taken and these are the prints taken.

Mr. Gladstein: If that is so there is no occasion to offer the prints.

Mr. Schnacke: They may want to use them for

(Testimony of Roy L. Erickson.)

some other purpose. I do not know. I am not presenting the case. They may be admitted.

(The fingerprint cards referred to above were thereupon received in evidence and marked Government's Exhibit No. 78.)

Mr. Schnacke: Q. I will show you the second of the cards you previously identified. Will you tell me what that card represents?

A. These are the fingerprints taken, placed on the paper, of Carl Ross.

Mr. Schnacke: I will offer that in evidence as Government's Exhibit next in order for the same purpose.

Mr. Gladstein: May we have the same objection?

The Court: Admitted for the same purpose.

(Whereupon the fingerprint card referred to above was received in evidence and marked Government's Exhibit No. 79.) [152]

Mr. Schnacke: Q. I will show you the third of the cards you identified and ask you if you will describe what that card represents?

A. These are the fingerprints placed on the paper for Samuel Coleman.

Mr. Schnacke: For the same purpose I will offer that card in evidence as Government's Exhibit next in order.

Mr. Gladstein: Same objection.

The Court: Same ruling.

(Whereupon the fingerprint card referred to above was received in evidence and marked Government's Exhibit No. 80.)

(Testimony of Roy L. Erickson.)

Mr. Schnacke: Q. I will show you the fourth of the cards you identified and ask you if you will describe that?

A. These are the fingerprints from the fingers of Robert Thompson and placed on the card.

Q. That is the Robert Thompson whom you previously identified as being present at the cabin at the time of the arrest, is that it?

A. Yes, sir.

Mr. Schnacke: I will offer that in evidence as Government's next in evidence for the same limited purpose.

Mr. Gladstein: I will object to that on behalf of each and everyone of the defendants, severally and individually, and for the additional reason they are incompetent, irrelevant [153] and immaterial. They are not probative of any issue in the case.

The Court: It may be necessary to establish the identity of this man whose name is mentioned in the indictment.

Mr. Gladstein: I understand what the problems of the prosecution are under the law, but I think there is no foundation for a reception of this in evidence and I think it is prejudicial. It does not involve the defendants as such.

The Court: Overruled. It may be admitted.

(The fingerprint card referred to above was thereupon received in evidence and marked Government's Exhibit No. 81.)

Mr. Schnacke: Q. Mr. Erickson, I will call your attention to Defendants' Exhibit A-13, to which you

(Testimony of Roy L. Erickson.)

previously referred, that being the photograph of the mimeograph machine, and I will ask when you observed that mimeograph machine for the first time at the cabin if those cans of ink or either of them that are depicted there were open or sealed closed? That is, had the seal been broken on them? Were they new, unused cans or had they previously been opened?

A. They had previously been opened.

Q. And the mimeograph machine I understand was contained in a box when you first observed it?

A. Yes, sir.

Q. Was that box sealed tight? [154]

A. No.

Q. Had the mimeograph machine been inked prior to the time that you saw it, or was the machine entirely dry and shiny new?

Mr. Gladstein: If Your Honor please, that calls for a conclusion. He may state what he observed.

The Court: Yes. What was the condition?

The Witness: It appeared to have been a used machine.

Mr. Gladstein: I object to that.

The Court: Strike the answer out.

The Court: Q. What do you mean by that? Do you mean by that it was a new machine or what we speak of as a used machine, or what are you trying to tell us, that there was anything to show us it was freshly used? Is that what you are trying to get at?

Mr. Schnacke: I am trying to find out if the

(Testimony of Roy L. Erickson.)

inked cylinder, either interior or exterior, was wet and had been inked.

The Witness: It had been inked.

Mr. Schnacke: That is all.

Recross-Examination

Mr. Gladstein: Q. Mr. Erickson, you testified on redirect examination that you were present and observed the taking of fingerprints from four people, and you have named them.

A. I either observed it—I assisted in it and I took some of them. [155]

Q. There were five people taken into custody at that house and you have not named Sidney Steinberg as one of the persons whose fingerprints were taken, have you? A. No, I have not.

Q. Were they taken? A. Yes, sir.

Q. So that the five people who were there were fingerprinted? A. Yes, sir.

Q. Did you take any other fingerprints at or inside that cabin of any kind of any person, either from the person personally or from any other thing in the house at that time? A. I did not.

Q. Did you see anybody else do so at that time?

A. At that time, no.

Mr. Gladstein: That is all.

Mr. Schnacke: That is all.

Mr. Gladstein: I neglected to ask the usual rule excluding the witnesses. May I ask the Court to do that?

The Court: I do not know now. It is very dif-

ficult to do that. I do not know what witnesses have been here.

Mr. Gladstein: I appreciate that, and since it was I who was at fault, I am not going to raise any objection to anybody having been here.

The Court: Do you have any witnesses in the room now?

Mr. Schnacke: I do not know, Your Honor, whether there [156] are any here or not. We have not instructed them to stay out of the courtroom, and many of the witnesses have no place else to stay that provides any degree of interest for them. I do not think any showing has been made of any necessity for witnesses being excluded, and I respectfully oppose the motion. I think it is within the Court's jurisdiction whether to exclude them or not.

The Court: Are there any witnesses present?

Mr. Schnacke: (Turning to the audience in the courtroom) Is there anyone here subpoenaed as a witness in this matter?

There are some agents of the Federal Bureau of Investigation. I notice them in the back row. They are to be next called as witnesses, but other than they, I see no one else.

The Court: After this have the witnesses come into the witness room instead of into the courtroom. That applies equally in the case of the defense witnesses.

Mr. Schnacke: May we have one exception to that, Your Honor please? Mr. Erickson, who has worked so hard on this case, is essential at the counsel table with me.

Mr. Gladstein: No objection.

The Court: Call the next witness.

Mr. Foster: If Your Honor please, I think this is as good a time as any to start offering some of the documents that were marked for identification yesterday.

Mr. Gladstein: Your Honor, I would like to say that I [157] apprehend that these offers—I stayed up quite late reading some of these exhibits for identification. That is what Mr. Foster refers to. I have some authorities I would like to submit to the Court, and I apprehend the Court would not want counsel to argue law in front of the jury, and so I make the suggestion that we do it in the jury's absence.

The Court: I am not too overwhelmed by this problem. What is the point of offering these documents in evidence at this time? I am referring now to the long list of documents that were in various boxes that witnesses testified to. You have them identified. They are here now, and I could not admit them in evidence for exhibition to the jury, for the jury to see them, until there is some further relationship established.

Mr. Foster: If Your Honor please, perhaps Mr. Gladstein was right and we should argue that in the jury's absence.

Mr. Gladstein: I am satisfied with Your Honor's present ruling at this time. I do not want to argue, Your Honor, in view of that.

Mr. Foster: Very well. We will wait until a later time.

The Court: It is pretty early. I suppose you will have other data in the case. I assume so. They won't get lost. They have been marked for identification. They could be admitted for the limited purpose of establishing that they were documents that were obtained at a certain place and under certain circumstances, but that is just another way of marking [158] them for identification.

Mr. Schnacke: I respectfully suggest that they are properly admissible at this time, but I will follow Your Honor's advice and lay a further foundation for the documents.

The Court: The Judge always has an easier time when he has more of a record to rule on. We are asked to decide too many academic questions too soon.

Mr. Schnacke: Yes, Your Honor.

JOSEPH P. McCANN

called as a witness on behalf of the Government, and having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Q. Will you please state your name to the Court and jury?

A. Joseph P. McCann.

Direct Examination

Mr. Schnacke: Q. Mr. McCann, what is your occupation?

A. Special Agent of the F.B.I.

Q. Where is your duty station?

Mr. Gladstein: No objection.

The Court: Call the next witness.

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Mr. Gladstein: Your Honor, I would like to say that I [157] apprehend that these offers—I stayed up quite late reading some of these exhibits for identification. That is what Mr. Foster refers to. I have some authorities I would like to submit to the Court, and I apprehend the Court would not want counsel to argue law in front of the jury, and so I make the suggestion that we do it in the jury's absence.

The Court: I am not too overwhelmed by this problem. What is the point of offering these documents in evidence at this time? I am referring now to the long list of documents that were in various boxes that witnesses testified to. You have them identified. They are here now, and I could not admit them in evidence for exhibition to the jury, for the jury to see them, until there is some further relationship established.

Mr. Foster: If Your Honor please, perhaps Mr. Gladstein was right and we should argue that in the jury's absence.

Mr. Gladstein: I am satisfied with Your Honor's present ruling at this time. I do not want to argue, Your Honor, in view of that.

Mr. Foster: Very well. We will wait until a later time.

The Court: It is pretty early. I suppose you will have other data in the case. I assume so. They won't get lost. They have been marked for identification. They could be admitted for the limited purpose of establishing that they were documents that were obtained at a certain place and under certain circumstances, but that is just another way of marking [158] them for identification.

Mr. Schnacke: I respectfully suggest that they are properly admissible at this time, but I will follow Your Honor's advice and lay a further foundation for the documents.

The Court: The Judge always has an easier time when he has more of a record to rule on. We are asked to decide too many academic questions too soon.

Mr. Schnacke: Yes, Your Honor.

JOSEPH P. McCANN

called as a witness on behalf of the Government, and having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Q. Will you please state your name to the Court and jury?

A. Joseph P. McCann.

Direct Examination

Mr. Schnacke: Q. Mr. McCann, what is your occupation?

A. Special Agent of the F.B.I.

Q. Where is your duty station?

(Testimony of Joseph P. McCann.)

A. New York City, New York.

Q. How long have you been assigned to that station? A. Approximately six years.

Q. How long have you been with the Federal Bureau of [159] Investigation?

A. As Special Agent 8 years.

Q. Do you know the defendant in this case, Sidney Steinberg? A. Yes I do.

Q. For how long have you known him?

A. Intermittently since November 1950.

Q. That was the first occasion on which you saw him? A. I believe that was.

Q. Since November 1950, approximately how many times have you seen the defendant Steinberg?

A. Prior to August 1953 about six or seven times.

Q. You see the defendant Steinberg in court here this morning, do you? A. Yes, sir.

Q. Sitting at the defense table?

A. Yes, sir.

Q. Will you compare to the best of your ability his present appearance with the appearance that he had at the time that you were first acquainted with him or first saw him?

Mr. Gladstein: I am going to object to that because of the form of the question, asking for a comparison.

The Court: I think the objection is good. The witness can state, of course, what the description of him was at one time and his description at another time.

(Testimony of Joseph P. McCann.)

Mr. Gladstein: That is what I have in mind, Your Honor. [160]

Mr. Schnacke: Q. Will you describe defendant Sidney Steinberg as he looked when you first saw him, to the best of your ability?

A. When I first saw him he was approximately 165 pounds, around that weight. He was heavy. He had a full face and a heavy build. His hair grew long. Of course, his hair was black. He was approximately five feet six inches in height, sallow complexion, light complexion.

Q. On the day of August 27th, 1953, did you see the defendant Steinberg? A. Yes, sir.

Q. Where did you see him?

A. In the vicinity of the cabin located at Twain Harte, California.

Q. At what time of that day did you first observe him?

A. I observed him at approximately 12:00 noon below the hill where I was stationed in the yard, parking area near the house.

Q. From the time you first observed him on that day until you spoke with him for the first time on that day, if you spoke with him on that day, will you tell us what you did?

A. I first saw him approximately 12:00 noon and also observed other people in that same area around that yard. I saw Mr. Thompson, Mr. Coleman and the others, and at approximately 12:30, when we on the hill were satisfied that two of the individuals

(Testimony of Joseph P. McCann.)

below were Mr. Thompson and Mr. Steinberg, on whom [161] there was process outstanding——

Mr. Gladstein: I'm going to object to that.

The Court: That last statement, "on whom there was process outstanding," may go out.

The Witness: Well, two individuals that were known to us as fugitives.

Mr. Gladstein: I am going to object to that, if Your Honor please. Also I would like to suggest that this is not responsive to the question. The question asked him to describe the appearance of a person.

Mr. Schnacke: I asked him what he did at the time he first saw them.

Mr. Gladstein: Excuse me. I have a motion to strike "known to us as fugitives."

The Court: That last part I do not think is objectionable.

Mr. Schnacke: Q. In any event, you saw the two persons whom you were able to identify at that time as Steinberg and Thompson?

A. That is right.

Q. When had you first in your career observed Thompson?

A. I observed him in New York City during 1950 and 1949, I believe, too.

Q. During those years approximately how many times had you seen him?

A. Numerous occasions. [162]

Q. Would you describe Mr. Steinberg's appear-

(Testimony of Joseph P. McCann.)

ance on the occasion that you saw him at the Twain Harte cabin?

A. He was, I would say, approximately 125 pounds to 130 pounds in weight. His hair was the same color as previously but was cut short. He was much thinner, both his face and his body, and he had grown a moustache.

Q. I will show you Plaintiff's Exhibit 4 and ask if that corresponds to your recollection of Mr. Steinberg's appearance when you saw him at the Twain Harte cabin? A. Yes, it does.

Mr. Schnacke: If Your Honor please, may this be passed by the jurors one to the other in order that they may compare this with the present appearance of the defendant Steinberg, who I will ask to stand for just a moment so the jury can see him?

The Court: I do not think you need to stand. Remain seated. The jury can see him from there. Do you wish to pass the photographs?

Mr. Schnacke: Yes, Your Honor.

(The photograph referred to was thereupon passed to the jury.)

Mr. Schnacke: Q. Mr. McCann, will you describe Robert Thompson's appearance during the years 1949 and 1950 when you were acquainted with him?

A. He was approximately, as I recall, five feet ten inches in [163] height, about 180 to 190 pounds, long brown hair, fairly stocky build. That is about it.

(Testimony of Joseph P. McCann.)

Q. Will you describe his appearance as you saw him on August 27th, 1953?

A. In August 1953 he was, I would estimate, much heavier than when I first saw him. Probably weighed about 210, possibly 220. This hair was red. It appeared to be dyed. It was cut short. He also had a light strawberry blond moustache. He was very stocky in appearance. He had a very large stomach.

Q. What color were his eyebrows?

A. I believe they were strawberry blond too.

Q. I will show you Government's Exhibit No. 2 and ask if that correctly reflects the appearance of Robert G. Thompson when you saw him on August 27th, 1953? A. Yes, sir, it does. [164]

Q. Does that resemble the Robert G. Thompson—withdraw that question.

Mr. Schnacke: I might show this to the jury in this fashion, Your Honor, rather than pass it around. (Displaying exhibit to the jury.)

The Court: Well, it is a little difficult for the jury to see. I meant to tell you that before.

Mr. Schnacke: The light is bad.

The Court: I think it would be better to pass it, thank you.

(Exhibit passed to the jury.)

Mr. Schnacke: Q. Did you have a conversation with the defendant Sidney Steinberg on the 27th of August? A. Yes, I did.

Q. And at the Twain Harte cabin?

Mr. Gladstein: Pardon me. I am going to ask

(Testimony of Joseph P. McCann.)

that the questions, in view of the answer, not be leading from now on.

The Court: I don't know. I never can tell what a lawyer is going to ask.

Mr. Gladstein: He has already asked it, Your Honor.

Mr. Schnacke: Are you objecting to a question I have asked?

The Court: Well, go ahead.

Mr. Schnacke: Q. Where did that conversation take place, Mr. McCann? [165]

A. In the yard outside the cabin at Twain Harte.

Q. And about what time of day was that?

A. It was approximately 1:05 p.m.

Q. That was at about the time of the arrest that was testified to by Mr. Erickson?

A. Yes, sir.

Q. What had you done immediately before that time?

A. Immediately before that time the other agents on the hill and myself had come down the hill and entered the yard of the cabin and met with the arresting party coming from the other direction.

Q. And as you came onto the cabin area proper, where did you go?

A. I went to Mr. Steinberg.

Q. At the time of this conversation to which you have referred, who else was in your immediate presence?

A. Agent Carlisle.

Q. Anyone else?

(Testimony of Joseph P. McCann.)

A. The special agent in charge was in the yard.

Q. What was the nature of the conversation you had with Mr. Steinberg? What did you say and what did he say?

A. I asked Mr. Steinberg who he was.

Mr. Gladstein: Excuse me. I am going to ask Your Honor to rule that any such conversation is admissible only concerning the defendant Steinberg. [166]

The Court: Have you established where the other defendants were? Well, I think we will follow that rule insofar as the conspiracy count is concerned, Mr. Schnacke, until a later stage in the proceedings. The testimony, when it obviously refers to one defendant, would only be admitted as to that one defendant.

Mr. Gladstein: That is what I had in mind.

Mr. Schnacke: We will make the appropriate application at a later time.

The Witness: A. I asked Mr. Steinberg who he was. He said, "You know who I am." And then I said, "Sidney Steinberg," and he said, "Yes."

I advised him that he was under arrest, as he had previously been advised, for violation of the Smith Act.

Mr. Gladstein: Just a moment, if Your Honor please. I ask the last part be stricken as to "he had previously been advised."

The Court: Maybe that is what he said. I don't know. You will have to develop that.

Mr. Gladstein: Well——

(Testimony of Joseph P. McCann.)

The Court: I can't tell from the answer.

Mr. Schnacke: The answer was that that was the text of the conversation.

The Court: Was that what you said to him?

The Witness: A. No, sir, I did not say "as previously [167] advised him." I merely said to him, "You are under arrest for violation of the Smith Act."

The Court: The other part of the answer may go out.

Mr. Gladstein: Thank you, Your Honor.

Mr. Schnacke: Q. What did you do in connection with defendant Steinberg at that time?

A. I ordered him to raise his hands and put them against a tree, and then I searched his person.

Q. How was he dressed at that time?

A. At that time he was dressed in blue denims and blue canvas shoes with crepe soles.

Q. What if anything did you discover on the search of his person?

A. I discovered merely some tissue paper in one of the pockets of his denims.

Q. Did you have a further conversation with him?

A. A short time after that I asked him if he had any personal possessions——

Mr. Gladstein: Just a second. The answer was "Yes," and then I want to ask that counsel establish the proper foundation.

The Court: All right.

Mr. Schnacke: Q. You say this was a short

(Testimony of Joseph P. McCann.)

time after the search. Now, were the same persons present and was the circumstances the same as it was at the time of the first conversation? [168]

A. Yes, sir.

Q. And what was that conversation?

A. I asked Mr. Steinberg if he had any personal possessions in the cabin. He said that he did. I asked him what possessions or possessions he had. He said that he had a wallet.

I asked him where the wallet was. He said it was in a dresser drawer in the cabin.

I brought Mr. Steinberg inside, and he pointed to a dresser drawer in the living room of the cabin and directed us to a wallet, a brown wallet, in that dresser drawer. We showed the wallet to Mr. Steinberg and he said that that was his wallet.

The Court: Mr. Schnacke, you have some more?

Mr. Schnacke: Yes, sir.

The Court: I think perhaps we might take the noon recess now. We will resume the trial, ladies and gentlemen, at 2:00 o'clock. Please return at that time.

(Whereupon the noon adjournment was taken to the hour of 2:00 o'clock p.m. this date.) [169]

JOSEPH P. McCANN

resumed the stand as a witness on behalf of the Government and having been previously duly sworn, testified further as follows:

Direct Examination—Resumed

Mr. Schnacke: Q: Mr. McCann, as I recall, prior to the noon recess, you had testified that you had a conversation with Mr. Steinberg about a wallet? A. Yes.

Q. And that you went with him into the house, and that he pointed out a wallet as his, is that correct? A. Yes, sir.

Q. Where did you say that wallet was located?

A. The wallet was located in a drawer in a dresser in the living room of the house on the first floor.

Q. I will show you a wallet which is now empty and ask you if you can identify that wallet?

A. This is the wallet in question.

Q. Are there any marks on that by which you can make that identification?

A. My initials are on this corner right here (indicating), and my recollection is that—there is a stamp “Mexico” on [170] the wallet, and I recall there was a stamp “Mexico” on this particular wallet.

Mr. Schnacke: May the wallet be marked for identification Government’s exhibit next in order?

(Thereupon the wallet referred to above was marked Plaintiff’s Exhibit No. 82 for identification.)

(Testimony of Joseph P. McCann.)

Mr. Schnacke: Q. I will show you a key and a number of documents and ask you if you have seen those before and, if so, when and where?

A. Those items were in the wallet which was found in the dresser drawer, and the key with it.

Q. And the key, also?

A. The key, yes, sir. The key was in the wallet.

Mr. Schnacke: I will ask that these documents and the key be received in evidence as Government's exhibit next in order.

Mr. Gladstein: If Your Honor please, my first point of objection is that the offer is too broad. It should be limited, in any event, if admissible, as against the particular defendant involved. The offer is simply that they may be received in evidence, so my first point is, if it is received at all, it can only be received concerning the defendant Steinberg.

My second objection is, however, even as to this defendant, [171] there is no proper foundation laid and it is incompetent, irrelevant and immaterial.

Mr. Schnacke: We will offer these as to the defendant Steinberg only at this time, and will make the appropriate motion with respect to them at a later time.

The Court: The exhibits will be admitted as against the defendant Steinberg.

(Thereupon key and documents referred to were received in evidence and marked Plaintiff's Exhibit 83, against defendant Steinberg only.)

The Court: Perhaps it might be well if I state

(Testimony of Joseph P. McCann.)

to the jury now that in connection with this witness' testimony we have previously admitted a conversation between the witness and the defendant Steinberg. And now some documents as against the defendant Steinberg have been admitted.

Now, the Court has admitted these documents and this testimony only as against the one defendant for the time being. Until such time, if at all, as the Court makes an order admitting this testimony as against all defendants, it is the duty of the jury to consider this evidence only as against the particular defendant against whom it has been admitted.

Mr. Schnacke: Q. Now, Mr. McCann, you have referred to a key as being found among the items that are included in [172] Government's Exhibit 83.

Did you have occasion to use that key on any of the items or containers or bags found around the Twain Harte cabin?

A. Yes, sir, I did.

Q. And did you find at that time that this key fitted the lock of any of those items?

A. Yes, sir, I did.

Q. What lock did it fit?

A. There was a brown suitcase which was in the upper bedroom of the house, I believe on the south side, with lock number 1120 on it. That key, which is also marked 1120, fits into that suitcase.

Q. And that bedroom is the bedroom that is over the kitchen-dinette area, is that right?

A. May I look at the diagram?

(Testimony of Joseph P. McCann.)

Q. Yes (handing exhibit to the witness).

A. Yes, I believe that is.

Q. Was that right, or was it in the other bedroom?

A. I believe it was in that bedroom, sir.

Mr. Schnacke: Your Honor please, I would like to identify these documents that have been admitted for the jury.

The key you have already heard referred to. There is another very small piece of paper that—well, it is quite short. I will read it.

“Wed—W-e-d—July 23,” and the figures “20”. “July 25” and the figure “20”. “Wages July 27” and the figure “25”.

There is something that is stricken that I can’t read. Another line follows, apparently two words that are illegible, followed by a “2” and “25”. Then, “John to R 30. Wages August 9-25. Rent August 9-9th.”

It bears on the back the date and certain initials.

Another small scrap of paper says, “September 16-860”. Under that “For car”. Then initials.

State of California Citizens Angling license in the name of Josh Newberg. Description. Issued October 18, 1952.

Then there is a small caption, “Approved identification card. Name: Joshua Newberg, 1224 Windemere Avenue, Menlo Park, California.” Telephone number. “Employed by: Music teacher”. And a description below that and the agent’s initials.

(Testimony of Joseph P. McCann.)

Then there are three cards, business card type. "Joshua Newberg, teacher of violin and mandolin, 1224 Windemere Avenue, Menlo Park. By appointment. Davenport 3-2604."

There is a Social Security card in the name of Joshua Newberg containing a signature after the word "Worker's signature". The signature appearing there reads "Joshua Newberg."

Then there are six documents, all appearing to be of the same character, that is to say, rent receipts received of [174] Joshua Newberg. The first, "\$80 for rent, 1224 Windemere, 1st of August, ending September 1st, 1952" bearing signature that appears to be "Leona Swan." That is dated August 3, 1952.

The next of them is generally the same, covering the period September to October 1st, dated September 1st. Also \$80. Signed "Leona Swan".

The next is dated October 1, 1952, covering October to November 1st, 1952, \$80, signed "Leona Swan".

And "April 1, 1952, received of Joshua Newberg \$80," same address, "April to May, 1952, Leona Swan.

"July 3rd, 1952, received of Joshua Newberg, \$80". Same address. "July to August 1st, Leona Swan."

"May 25 to June 1." Same address. "May to June 1." Leona Swan's signature.

June 1, 1952, rent receipt, "Received of Joshua

(Testimony of Joseph P. McCann.)

Newberg \$80 for 1224 Windemere, 1st June to 1st of July \$80," signed "Leona Swan."

Mr. Schnacke: Q. Mr. McCann, in your search of the person of Mr. Steinberg and in the wallet of Mr. Steinberg did you find any material on him bearing the name "Sidney Steinberg"?

A. No, I did not.

Q. Or anything bearing the name "Sidney Stein"? A. No, I did not. [175]

Mr. Schnacke: No further questions, Mr. McCann.

Cross Examination

Mr. Gladstein: Q. Mr. McCann, did I understand you to say you had seen Mr. Steinberg six or seven times before August, 1953?

A. Yes, sir.

Q. I think you said you first knew him or knew of him about November 1950?

A. I believe so, sir.

Q. Was this a personal acquaintance?

A. No, sir.

Q. You merely observed him at some time, is that it? A. Yes, sir.

Q. Was he pointed out to you as being Sidney Steinberg?

A. I had seen pictures of him.

Q. I beg your pardon?

A. I had seen pictures of him and——

Q. Prior to that time?

A. Pardon me?

Q. Prior to November 1950?

(Testimony of Joseph P. McCann.)

A. Yes, sir.

Q. Where? In what city? What part of the United States did you see Sidney Steinberg for the first time?

A. I believe it was New York City. It was New York City. [176]

Q. I beg your pardon?

A. New York City.

Q. No question about that, is there?

A. No, sir.

Q. That was in November, is that right?

A. I believe so, sir.

Q. Do you remember where in New York City you saw him? Just the general location.

A. Well, in the vicinity of his residence and in the vicinity of Communist Party headquarters.

Q. What is the address of the latter and what is the address of the former?

A. The address of his residence at that time was 31-23 83rd Street, Jackson Heights, Queens. That is his residence.

Q. Yes. And the other?

A. Communist Party headquarters was 35 East 12th Street.

Q. What city? A. New York City.

Q. Were you keeping him under surveillance at that time?

A. No, sir. In that particular month?

Q. Yes, in that particular time?

A. No, sir, not that particular month, no.

(Testimony of Joseph P. McCann.)

Q. But you did put him under your observation, is that right? A. Yes, sir. [177]

Q. I take it that wasn't an idle act of curiosity on your part, but part of your orders or instructions, is that so? A. Yes, sir.

Q. For how long on that first occasion did you keep him under your observation?

A. As best I can recall, and I feel quite sure the date was in November 1950, I observed him leaving his house one particular morning and proceeding to Communist Party headquarters via subway.

Q. You followed him?

A. That is correct.

Q. How long altogether did you have him under your observation or surveillance or examination at that time?

A. I believe it was approximately an hour.

Q. Was there, to your knowledge, any lawful process outstanding for his arrest or anything of that kind at the time?

Mr. Schnacke: I object to that as being immaterial. No process is necessary for such activity on the part of the FBI.

Mr. Gladstein: I am not suggesting that there is a question of whether there has to be lawful process.

The Court: It may be a matter of circumstances that goes into the matter of observation.

Mr. Schnacke: I don't see how whether there was process outstanding or not would affect the

(Testimony of Joseph P. McCann.)

ability recognize the [178] man after he sees him on this last occasion.

The Court: I would be inclined to agree with you, but nevertheless counsel can inquire into the circumstances. I will overrule the objection.

The Witness: There was no process.

Mr. Gladstein: Q. When was the next time you saw him? A. In June of 1951.

Q. Could you give us, to the best of your recollection, if you have one, the time in June?

A. I believe it was during the week running from June the 12th, approximately, to June the 17th.

Q. Well, are we to understand you saw him once during that interval or a number of times?

A. A number of times.

Q. How many times during that interval?

A. Oh, I would say approximately four times.

Q. Four? And in what city or cities?

A. New York City.

Q. Were these similar surveillances to the one that you have described?

A. The times that I saw him in June, I observed him on all occasions briefly, that is, when he was in the vicinity of his residence, and then on another occasion, perhaps, in the vicinity of Communist Party headquarters. I did not follow him for any length of time. [179]

Q. But you did follow him from one place to the other? A. No, I did not, sir.

Q. I see.

(Testimony of Joseph P. McCann.)

A. I merely observed him in both places.

Q. I see. You were assigned to do that?

A. Yes, sir.

Q. And you say the last such date would be before the 17th of June, 1951?

A. Yes, before June 17th.

Q. And there was no process of any kind outstanding against him during that period, was there?

A. There was no process outstanding.

Q. When is the next time you saw him, and in what city, after June 17th, 1951?

A. At Twain Harte, California, on August 27, 1953.

Q. And that's the time that you have already told us about?

A. Yes, sir.

Q. Mr. McCann, in your testimony this morning I understood you to say that at the time that you and the other agents left your place of observation at the house and went into the yard, that you found Mr. Steinberg there outside the house, is that so?

A. Yes, sir.

Q. And observed him alone or with anyone else?

A. Mr. Thompson was standing nearby. [180]

Q. With him? Oh, nearby?

A. Nearby.

Q. And were they the only two persons among the five who were taken into custody who were then outside the premises?

A. As best I can recall.

Q. Yes, sir. I understood you to say that you then had a conversation, a brief one, with Mr.

(Testimony of Joseph P. McCann.)

Steinberg in which you stated to him or asked him if he were Sidney Steinberg, and he said, "You know who I am," and so on, is that so?

A. Yes.

Q. And at that time you told him he was under arrest, is that so? A. Yes, sir.

Q. Were you the first officer that stated to him he was under arrest?

A. No, sir, I wasn't.

Q. Who was the first?

A. The special agent in charge advised the persons in the yard, namely, Thompson and Steinberg, prior to my telling Mr. Steinberg that.

Q. What did he say?

A. "You are under arrest. This is the FBI. You are under arrest."

Q. Then thereafter you, in your conversation with Mr. Steinberg, told him—you repeated the statement, in essence, [181] "You are under arrest"? A. Yes.

Q. And you told him what he was under arrest for, is that so? A. Yes.

Q. And you said, as I understand it, he was under arrest on a charge under the Smith Act?

A. Yes, sir.

Q. Now, was that the first statement to Mr. Steinberg made by you or anybody in your presence informing him of the ground or reason for his arrest?

A. I am not sure whether the announcement of the special agent in charge was prior to my or

(Testimony of Joseph P. McCann.)

subsequent to my statement, but he did also tell the defendants that they were under arrest,—that is, Steinberg and Thompson,—for violation of the Smith Act. I am not sure whether that was prior or subsequent to my advising him.

Q. You heard him say that either before or after you said the same thing?

A. That's right, yes, sir.

Q. I think you said that later on—withdraw that.

Immediately after that they were told to raise their hands, and so on, is that so?

A. Well, almost simultaneously.

Q. Yes. Guns were drawn by the agents of the Bureau? A. Yes, sir. [182]

Q. And I believe you said that they were directed to a tree or some trees nearby?

A. As far as Mr. Steinberg is concerned, we directed him to place his hands up against a tree.

Q. Up against a tree? Was he then handcuffed?

A. After we searched him, we then handcuffed him.

Q. Describe to us what the handcuffing consisted of?

A. Well, you reach out and grip his arm——

Q. No, just what did you do at that time, not what you would generally or usually do.

A. I don't understand the question.

Q. Did you handcuff him?

A. Yes, I handcuffed him, yes, sir.

(Testimony of Joseph P. McCann.)

Q. Did you put his arms around the tree and handcuff him? A. No, sir.

Q. Are you sure about that?

A. No, sir, I did not.

Q. Didn't you put his arms around the tree and handcuffed his hands, leaving him in a position where he had the tree between his body and his hands? A. I do not recall that, sir.

Q. Did you later come up to him and ask him if the handcuffs were too tight?

A. We did ask him if the handcuffs were too tight, yes, sir.

Q. And he said—what did he say? [183]

A. I recall that he said they were too tight.

Q. Is it true you then tightened them?

A. I loosened them.

Q. Are you positive of that?

A. I am positive of that, yes.

Q. How many times did you adjust the handcuffs?

A. As best I can recall, one time.

Q. Thereafter, I understood you to say that prior to taking Mr. Steinberg and the other defendants away from the premises, you or somebody in your presence asked him if there was anything he wanted to take with him and he made reference to a wallet, is that so? A. Yes, sir.

Q. And that you then took him into the house and this wallet that you have identified was the one he pointed out? A. Yes, sir.

(Testimony of Joseph P. McCann.)

Q. Your question to him was whether he wanted to take that with him, is that so? Before that?

A. My question outside was whether he had any thing in the cabin he wished to take with him.

Q. Yes. And your testimony is that he indicated that he had, and you took him in and he pointed out this wallet? A. That is right.

Q. Did you give him the wallet?

A. I showed him the wallet. [184]

Q. Did you give him the wallet?

A. I did not hand it to him.

Q. Did you give it to him?

A. I did not hand it to him.

Q. Did you give him any part of it?

A. No, sir.

Q. Did you give him anything in it?

A. No, sir.

Q. You didn't have intention of letting him have the wallet, did you?

Mr. Schnacke: I object to that as being immaterial.

The Court: Well, it is argumentative. Sustained on that ground.

Mr. Gladstein: Q. Did you take the wallet with you and then did you turn it over to somebody else? A. I examined the wallet.

Q. My question was, did you turn it over to somebody else—did you take it with you?

A. Yes, sir.

Q. You did? A. Yes, sir.

Q. With you personally? A. Yes, sir.

(Testimony of Joseph P. McCann.)

Q. And took it back to San Francisco?

A. Yes, sir. [185]

Q. On the ride to San Francisco who were the occupants of the car in which you rode?

A. Special Agent James Carlisle drove the car. I rode in the back seat with Mr. Steinberg.

Q. Those are the three people? No others were in the car? A. That is right, sir.

Q. Did you ask Mr. Steinberg during that ride if he cared to hear about his family?

A. Yes, sir.

Q. You knew he had a family, did you?

A. Yes, sir.

Q. What does his family consist of?

A. He has a wife, Sophie Steinberg and two boys.

Q. And their ages?

A. Oh, I believe they are approximately 17 and 13.

Q. What did you do with the wallet and the contents after you returned to San Francisco?

A. I still had it with me when I returned to the office, and Mr. Steinberg and I and the other agent went into an interview room, and I again looked at the contents of the wallet.

Q. Yes? And did what?

A. I then initialed the contents of the wallet and turned it over to one of the other agents to be detained in our files.

Q. Did you initial each item contained in the wallet? [186] A. Yes, sir.

(Testimony of Joseph P. McCann.)

Q. What initials did you place on the wallet?

A. JPMc.

Q. Were your initials stamped on each document you have identified here?

A. Yes. I had a little trouble with the key. It was difficult.

Q. Was the key inside the wallet?

A. Yes.

Q. Aside from the key, you had no trouble writing your initials? A. No, sir.

Q. All right. What did you do then with the wallet and its contents?

A. I turned it over to one of the agents who put it in our files for safe keeping.

Q. That is the last you saw of it until today?

A. No, I have seen the wallet previously to today.

Q. Previously to today and since the time of the arrest? A. That is right.

Q. On how many occasions?

A. I believe on one occasion.

Q. Then was when, please?

A. In the United States Attorney's office.

Q. When? [187]

A. Oh, I believe it was yesterday.

Q. Did you appear before the Grand Jury?

Mr. Schnacke: I will object to that as being immaterial.

The Witness: Excuse me, sir?

Mr. Gladstein: There is an objection before the Court. Just a moment.

(Testimony of Joseph P. McCann.)

Mr. Schnacke: I don't see how his appearance before the Grand Jury——

The Court: What Grand Jury are you talking about?

Mr. Gladstein: The Grand Jury in this case, in regard to the wallet and its contents, if Your Honor please.

The Court: Well, that is—. I never heard of that being asked before.

Mr. Gladstein: I think it is permissible, Your Honor.

Mr. Schnacke: In any event, the proceedings before the Grand Jury are secret.

Mr. Gladstein: I didn't ask him what he said before the Grand Jury. I asked if he was there.

Mr. Schnacke: It isn't proper——

Mr. Gladstein: (interposing) There is no secret who is before the Grand Jury. The newspapers get it.

The Court: They are not supposed to know, but they get it anyhow.

Mr. Gladstein: I will ask for a ruling on the question, if Your Honor please. [188]

The Court: I will sustain the objection. I can't personally see the materiality of that.

Mr. Gladstein: Very well.

Mr. Gladstein: Q. Did you lodge a charge or sign a warrant or complaint against Mr. Steinberg?

Mr. Schnacke: I object to that, being outside the scope of the direct examination.

(Testimony of Joseph P. McCann.)

The Court: Read that, please.

(Question read by the Reporter.)

The Court: Sustained. Unless there is some question of credibility or personal feeling of some kind. It doesn't make any difference, anyhow. Let him answer it. Overruled.

The Witness: Yes, I did, sir.

Mr. Gladstein: Q. When and where?

A. On August 28th, 1953.

Q. Where?

A. At the United States Attorney's office.

Q. What charge did you levy against him?

A. I believe it was a harboring charge. We signed a complaint. I signed a complaint, as I recall, accusing Mr. Steinberg of being involved in the harboring of Mr. Thompson.

Q. You didn't charge him with violation of the Smith Act? A. No, sir.

Q. You didn't charge him with being a fugitive from the Smith Act? [189] A. No, sir.

The Court: Well, he couldn't do that anyhow. He wouldn't have any power or authority to do that, so don't waste time on that.

Mr. Gladstein: Q. Did you serve a warrant of arrest on Mr. Steinberg at any time?

A. No, sir.

Q. Did you have a warrant of arrest to serve on him? A. At one time I did, sir.

Q. When? A. On June 20, 1951.

Q. Did you have one on August 27, 1953?

A. No, sir, not in my possession.

(Testimony of Joseph P. McCann.)

Mr. Gladstein: Just a moment, Your Honor. Just one other question:

Mr. Gladstein: Q. I take it it is correct that you didn't actually ever serve a warrant of arrest on him? A. No, sir.

Q. When you say "No, sir," you mean that is correct? A. That is correct.

Mr. Gladstein: Thank you. That is all.

Mr. Schnacke: Just a moment, Mr. McCann. One or two more questions. [190]

Redirect Examination

Mr. Schnacke: Q. Are you assigned to some special squad or duty by the Federal Bureau of Investigation? A. Yes, sir, I am.

Q. And what is that squad?

A. In New York City?

Q. Well, are you on a particular detail or type of work?

Mr. Gladstein: Oh, I am going to object to that as incompetent, irrelevant and immaterial, if Your Honor please, and not proper redirect examination.

Mr. Schnacke: Well, the question has come up as to questioning the occasions on which he observed Mr. Steinberg. I wish to develop the circumstances under which that observation or observations were made.

Mr. Gladstein: But I object to the question about the nature of the detail. I suggest that it invites testimony that may be improper, harmful, and prejudicial error.

(Testimony of Joseph P. McCann.)

The Court: Well, at the time——

Mr. Schnacke: I will withdraw the question.

The Court: You can ask him at the time.

Mr. Schnacke: Yes, Your Honor. I will withdraw the question.

Mr. Schnacke: Q. Mr. McCann, you say you did have a warrant in your possession for the arrest of Mr. Steinberg on June 20, 1951?

A. Yes, sir. [191]

Q. Did you attempt to serve that warrant?

Mr. Gladstein: I am going to object to that as incompetent, irrelevant and immaterial and not proper redirect examination.

Mr. Schnacke: It is a subject that you brought up, Mr. Gladstein.

Mr. Gladstein: No, I asked him if he had a warrant.

The Court: I will overrule the objection.

The Witness: Will you read the question, please?

Mr. Schnacke: Q. Did you try to serve that warrant? A. Yes, sir.

Q. What did you do in your efforts to serve that warrant?

Mr. Gladstein: I will object to that as hearsay and improper redirect examination and not within the scope of the proper redirect examination.

The Court: Well, in a very technical sense it is probably not redirect. It is in the general scope of issues. I think the question itself is a little too broad, counsel. You can ask him whether he tried to serve it and whether he did serve it or not. I

(Testimony of Joseph P. McCann.)

think that would be as far as it would be proper to go.

Mr. Schnacke: Q. Did you try to serve that warrant?

A. Over what period of time did you try to serve that warrant?

Mr. Gladstein: May I have the same objection, if the Court please? [192]

The Court: For that limited extent I will allow it.

The Witness: A. I first attempted to serve it on June 20th, 1951, at Mr. Steinberg's residence, and he had not been seen since that time.

Mr. Gladstein: I will object to that last portion, if Your Honor please. He may state whether or not he served it on that occasion. To say whether he has or has not been seen is purely an opinion and conclusion of the witness.

The Court: That is a conclusion.

Mr. Gladstein: That is my point.

The Court: The witness may state what he saw.

Mr. Gladstein: Yes. I am not objecting to that.

Mr. Schnecke: Q. He was not seen by you after June 20th, 1951 until the time you saw him at the cabin at Twain Harte? A. Yes, sir.

The Court: Q. You were not able to serve the warrant after that time? A. No, sir.

Mr. Schnacke: That is all.

Recross Examination

Mr. Gladstein: Q. You tried to serve him on June 20th, 1951? A. Yes.

(Testimony of Joseph P. McCann.)

Q. In New York City? [193] A. Yes.

Q. Is that the last date you sought to effect service of the warrant on him?

A. That is the last day I went to his residence, yes, sir.

Q. You had the warrant with you at that time?

A. Yes, sir.

Q. Did you keep the warrant?

A. In my physical possession?

Q. Or under your control.

A. Yes, it was in the New York office, yes.

Q. Until when?

A. Until Mr. Steinberg was arrested out here, and then I believe the New York office sent it out here.

Q. You did not bring it with you?

A. No, sir.

Q. When did you come to California and San Francisco in connection with this arrest?

A. I arrived in San Francisco on August 25th, I believe.

Q. And it was in connection with this matter, was it?

Mr. Schnacke: I will object to that as being immaterial and beyond the scope of the redirect.

The Court: Sustained.

Mr. Gladstein: Q. Did you or didn't you bring with you the warrant for Mr. Steinberg's arrest?

A. No, sir. [194]

Mr. Gladstein: Will Your Honor indulge me if I frame one more question in that connection?

(Testimony of Joseph P. McCann.)

Mr. Gladstein: Q. Is it or not true that your coming to California on or about the 25th of August 1953 had to do with the matter of arresting Sidney Steinberg?

Mr. Schnacke: I object to that as being immaterial and beyond the scope of the redirect examination.

The Court: What difference does it make anyhow? It is obvious he must have come out here for something in connection with it.

Mr. Gladstein: Yes, that is right, but I would like to have him state if that is the fact.

The Court: I guess they were trying to find him. That is what the witness indicates. What difference does it make what day he came?

Mr. Gladstein: Does Your Honor wish to have me answer that?

The Court: No, perhaps I should not have said it. I do not see any point in prolonging the examination. It is not material to the direct examination.

Mr. Gladstein: According to my theory of the defense it is material and I will simply take a ruling.

(The question was read.)

The Court: Sustained.

Mr. Gladstein: That is all. [195]

Mr. Schnacke: One more question.

Further Redirect Examination

Mr. Schnacke: Q. The warrant that you at-

(Testimony of Joseph P. McCann.)

tempted to serve on June 20th, 1951, do you know from what Court or authority that was issued?

Mr. Gladstein: I object to that because it is not the best evidence. It calls for the opinion and conclusion of the witness.

The Court: The trouble is you opened this subject about the warrant yourself. Of course it is not the best evidence. There is no doubt about it. It is a waste of time. When you have matters of record you should not be asking people to tell you what they think about papers.

Mr. Gladstein: If Your Honor will indulge me, and I think the record will support me, this is how the matter came up: I asked the witness if he had a warrant for the arrest of Mr. Steinberg on the 27th and he said no, but he had one previously from New York. In other words, it was a volunteer statement on his part.

The Court: No, you asked him whether at the time he went to see him he had a warrant and whether he kept it with him, and he said no, he had it in the office. You developed that line of examination, too.

Mr. Gladstein: That came without—— [196]

The Court: Let us pass over it and get on to something else.

Mr. Gladstein: I simply made an objection.

Mr. Schnacke: Was the objection sustained, Your Honor?

The Court: That was your objection.

Mr. Schnacke: No, my last question was for the

(Testimony of Joseph P. McCann.)

authority issuing the warrant that he had in his possession in New York.

The Court: Well, you know what it is, counsel.

Mr. Schnacke: The point is there has been a discrepancy by one day I would like to clarify.

The Court: Overruled.

The Witness: A. The warrant that I served——

Mr. Schnacke: (Interposing) That you attempted to serve on June 20th, 1951, in New York.

The Witness: That was a commissioner's warrant issued from the office of the United States Commissioner.

Mr. Schnacke: Thank you.

The Witness: The Southern District of New York.

Mr. Schnacke: No further questions.

The Court: Anything else? That is all.

(Witness excused.)

JAMES F. EAGAN

called as a witness on behalf of the Government, and having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows: [197]

The Clerk: Q. Please state your name to the Court and to the jury. A. James F. Eagan.

Direct Examination

Mr. Schnacke: Q. Mr. Eagan, what is your occupation?

A. Deputy United States Marshal.

(Testimony of James F. Eagan.)

Q. In the course of your employment as Deputy United States Marshal have you ever met or seen the defendant Sidney Steinberg?

A. I have.

Q. Will you describe the circumstances under which you saw him and the approximate date, if you recall?

A. Well, I don't remember the exact date but it was at the time they were in custody in our office.

Q. At the time Mr. Steinberg was in your office did you have occasion to take his fingerprints?

A. I did.

Q. I will ask you to look at that document and identify it if you will, please?

A. I am sorry, I didn't hear you.

Q. I said will you identify that document if you can.

A. That is the fingerprints I took of Sidney Steinberg on August 31st, 1953.

Q. And that is a business record of the office of United States Marshal, is it? [198]

A. That is right.

Mr. Schnacke: I will ask that that document be received in evidence.

The Court: Admitted as to the defendant Steinberg.

(The document referred to was thereupon received in evidence and marked Government's Exhibit No. 84.)

Mr. Schnacke: No further questions.

Mr. Gladstein: No questions, Your Honor.

(Testimony of James F. Eagan.)

Your Honor stands that this last exhibit, similar to the previous one, is subject to a general objection that they have no probative value unless there is some further purpose.

The Court: Overruled.

(Witness excused.)

WILLIAM L. HANNAN

called as a witness on behalf of the Government and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Q. Please state your name to the Court and to the jury.

A. William L. Hannan.

Direct Examination

Mr. Schnacke: Q. Mr. Hannan, what is your occupation? [199]

A. Deputy U. S. Marshal.

Q. Assigned to what office?

A. The Marshal's office, Criminal Department.

Q. In San Francisco? A. Yes.

Q. In connection with your duties on about September 9th, 1953, did you see any of the defendants in this case? A. Yes, sir, I did.

Q. Which of the defendants did you see?

A. I saw all three of them.

Q. Which three? I will withdraw that.

Among the three did you see the defendant Patricia Blau? A. Yes.

(Testimony of William L. Hannan.)

Q. Who is sitting at the end of the table?

A. Yes.

Q. On that occasion did you have occasion to take her fingerprints? A. Yes.

Q. I will show you a document and ask you if that document represents the fingerprints that you took of Patricia Blau on that occasion?

A. Yes.

Q. On that occasion did you ask the defendant her name? A. Yes.

Q. What name did she give you? [200]

A. Janet Marie Conroy.

Mr. Schnacke: I will ask that the document identified by the witness be received in evidence as Government's next in order.

Mr. Gladstein: Same objection and the same request for limitation, if the Court please.

The Court: Same ruling. Admitted.

(The document referred to above was thereupon received in evidence and marked Government's Exhibit No. 85.)

Mr. Schnacke: No further questions.

Cross Examination

Mr. Gladstein: Q. Is this your writing on this document at the top? A. Yes.

Q. I see you have written there Janet Marie Conroy? A. Yes.

Q. You have also written "alias Patricia Blau?"

A. Yes.

(Testimony of William L. Hannan.)

Q. You asked her if that had been her name at one time?

A. Well, she was under that—yes.

Q. She said that had been her name?

A. Yes.

Mr. Gladstein: That is all. [201]

Mr. Schnacke: If Your Honor please, may the order excluding witnesses be held not to apply to members of the United States Marshal's office whose duties will call them in and out of the courtroom?

The Court: All right.

(Witness excused.)

GLENN A. HARTER

called as a witness on behalf of the Government, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Q. Please state your name to the Court and jury.

A. Glenn A. Harter.

Direct Examination

Mr. Schnacke: Q. Mr. Harter, what is your occupation?

A. I am a special agent with the F.B.I.

Q. For how long have you been so employed?

A. 11 years.

Q. To what office are you assigned?

A. San Francisco.

(Testimony of Glenn A. Harter.)

Q. On August 27th of last year were you one of the agents at the Twain Harte cabin?

A. Yes, sir. [202]

Q. Did you participate in the arrest of any of these defendants? A. Yes, I was present.

Q. You were present at the time they were arrested. What time did you first arrive at the cabin, Mr. Harter?

A. About five minutes after 1:00.

Q. After you arrived can you tell us in general what you did in connection with these defendants? What was your assignment at the cabin, in other words?

Mr. Gladstein: I am going to object to what his assignment was.

Mr. Schnacke: Q. Pursuant to your assignment what did you do at the cabin?

A. I stood outside with the other agents and the defendants, and then I went into the cabin and stood there. At the same time the matron was with the female defendant and then I went back outside——

Q. There are two female defendants. Which of them are you referring to?

A. Mrs. Kremen. When I got outside I looked in her handbag and her overnight case that she brought with her in the company of the matron.

Q. Where was that, Mr. Harter?

A. Just outside the cabin door.

Q. In the area outside the cabin? [203]

A. Yes.

(Testimony of Glenn A. Harter.)

Q. Approximately what time of day was that, do you recall? How long after the arrest was made did that occur?

A. I don't recall exactly. I would say maybe 20 minutes, 30 minutes.

Q. Did I understand you to say that Mrs. Kremen had been in the cabin and had changed her clothes and was coming out of the cabin at this time?

A. That is correct.

Mr. Gladstein: I didn't get all of that. Maybe he did but I didn't hear it. I object to leading questions.

The Court: Perhaps it was, but the witness already answered it.

Mr. Schnacke: Q. Did you have a conversation with Mrs. Kremen on that occasion?

A. No, sir, I didn't converse with her at that time.

Q. Did you say anything to her?

A. No, sir.

Q. And she said nothing to you? A. No.

Q. You say she did have with her her purse, is that right?

A. That is correct.

Q. Did you take that purse from her?

A. No, she set it down on the ground there, and I then examined it. [204]

Q. What did you do with respect to the contents of that purse?

A. I put my initials and the date on each piece of paper that was in her purse that I thought would be pertinent.

(Testimony of Glenn A. Harter.)

Q. Then what did you do with her purse?

A. Then I turned it over to Mr. Erickson.

Q. I will show you certain documents and ask you if you have ever seen those before, and if so when and where?

A. Yes, these are the documents that were in the purse of Mrs. Kremen.

Mr. Schnacke: I will ask that those documents as a group be received in evidence as Government's Exhibit next in order, and we will offer them at this time solely against the defendant Shirley Kremen.

Mr. Gladstein: I make the objection that there was no warrant of arrest or search warrant at the time and under the circumstances no proper foundation has been laid for the reception of these documents in evidence, and I move to suppress them, the same motion I made about previous documents.

The Court: I have already ruled on the objection, so the motion will be overruled.

(The documents referred to were thereupon received in evidence and marked Government's Exhibit No. 86 as to the defendant Kremen.)

Mr. Schnacke: May I identify these to the jury, if Your [205] Honor please? There is a library card, the San Jose Public Library, in the name Lee Kaplan, Mrs. R. K. in parenthesis, 1244 Lick Avenue, expires September 16th, 1955.

Another library card, San Jose Public Library, expires June 18th, 1955, Richard Kaplan, 1244 Lick Avenue.

A State of California resident citizen's angling

(Testimony of Glenn A. Harter.)

license in the name of Lee Kaplan, 1244 Lick Avenue, San Jose.

United States Forest Service, free campfire permit issued to Mrs. Lee Kaplan, 1244 Lick Avenue, San Jose, date of issue July 13th, 1953. The signature of the issuing officer is shown as James Morrow, Agent, issued at Twain Harte, and an automobile as described. The make, Plymouth; license number 1A38276, the State, California.

Social Security card in the name of Lee Kaplan, an identification card, automobile insurance, bearing the rubber stamp GARVIS, insurance agent, Oakland, California. The typewritten name, Richard Kaplan, San Jose, California. Policy number, and it expires September 18th, 1953.

California Motor Vehicle Operator's License in the name of Lee Lefko Kaplan, 1244 Lick Avenue, San Jose, California.

Pacific Gas & Electric Company bill issued to R. Kaplan, 1244 Lick Avenue; San Jose Water Works bill, bearing on the reverse the name Richard R. Kaplan, 1244 Lick Avenue, San Jose.

And a document saying that this is your invoice to Mrs.—I [206] beg your pardon—to Mr. Richard Kaplan, 1244 Lick Avenue, San Jose.

Under make and model it reads, Ply. '47. The license number and State, 1A38276 California. Remove & replace radiator 3.50. Check car for—and I can't read the last word—it looks like it begins with "sh"—and has two other letters—2.50. The

(Testimony of Glenn A. Harter.)

charge for one radiator \$41.00. Total bill, \$48.44, marked paid in full.

Mr. Schnacke: Q. Mr. Harter, did the defendant Shirley Kremen have anything on her person or possession when seen by you containing the name Shirley Kremen?

A. The material I examined did not reflect any such name.

Q. Or anything reflecting the name Mrs. Irving Kremen?

A. Only the names that you just read there. That was the material I observed.

Q. What time did you leave the area around the cabin, Mr. Harter?

A. Do you mean to come to San Francisco?

Q. Finally leave it.

A. We came back to San Francisco and left about 2:30 or 2:40 p.m.

Q. Did you leave by automobile?

A. Yes, sir.

Q. Were you driving that car?

A. No, sir. [207]

Q. Who was driving it?

A. Agent Galligan.

Q. Who was in the car with you?

A. The defendant Ross or Rasi.

Q. Is that all, you, Agent *Gallagher*, and the defendant Carl Ross? A. That is right.

Q. What type of car is that? A 4-door sedan?

A. 4-door sedan.

Q. Where were you sitting?

(Testimony of Glenn A. Harter.)

A. I was sitting in the right rear.

Q. Where was Mr. Ross sitting?

A. In the left rear.

Q. That would leave Special Agent *Gallagher* in the front by himself? A. That is correct.

Q. You say you left the cabin about what time?

A. About 2:30 or 2:40.

Q. You drove where?

A. We came to San Francisco directly from the cabin.

Q. During the course of that ride did you have any conversation with the defendant Steinberg?

A. Yes, sir.

The Court: You have the wrong one.

Mr. Schnacke: With the defendant Ross. I beg your pardon. [208]

Mr. Schnacke: Q. What was the nature of that conversation? What did you say and what did he say?

A. Well, we didn't say very much. We mentioned fishing. I asked him if he enjoyed the fishing and if the fishing had been very good, and he stated no, the fishing was quite poor there. The fish are all quite small. The motor of the car was making quite a bit of noise.

Mr. Gladstein: I didn't hear the last at all. I am sorry.

The Court: He said, "The motor of the car was making quite a bit of noise."

The Witness: It made a lot of squeaky noises like a violin, and I said to Ross, "Does that remind

(Testimony of Glenn A. Harter.)

you of Steinberg's violin playing?" And he stated, "Oh no, he plays much better than that."

The rest of the conversation was maybe about the trees or the road.

Mr. Schnacke: I think I mispronounced the name of the agent who drove the car. I believe I said Gallagher. His name is Galligan?

The Witness: Galligan, that is correct.

Mr. Schnacke: Thank you, Mr. Harter.

The Court: Proceed. [209]

Cross-Examination

Mr. Gladstein: Q. You say, sir, that you took these documents from a purse? A. Yes, sir.

Q. Describe that purse for me.

A. I don't recall the description of the purse.

Q. Can you tell us anything at all about it?

A. No, sir, other than it was in a purse.

Q. Was it a wallet rather than a purse?

A. There was enclosed in the purse a small wallet.

Q. Where were the documents that you have identified? In the purse or in the wallet?

A. The small wallet was in the purse. All the documents were in the purse.

Q. My question was where were the documents, in the purse or in the wallet?

The Court: He said all the documents were in the purse.

Mr. Gladstein: Q. Were they outside of the wallet? A. I don't recall.

(Testimony of Glenn A. Harter.)

Q. Was the wallet empty?

A. The wallet was not empty.

Q. Did the wallet contain the documents that you identified?

A. It may have contained some of them.

Q. As a matter of fact, that wallet you took from inside the premises together with its contents, didn't you? [210]

A. Inside the premises I handed the wallet to Mrs. Kremen.

Q. And it was not in any purse at that time, was it?

A. I don't understand your question.

Q. I say the wallet was not in any purse at the time you handed the wallet to Mrs. Kremen, was it?

A. No.

Q. Where was the purse at that time?

A. I couldn't tell you.

Q. Where did you find the purse before you handed it to Mrs. Kremen?

A. I didn't hand the purse to Mrs. Kremen.

Q. Excuse me, the wallet. Where did you find the wallet before you handed it to her?

A. It was in an open drawer at the foot of the stairs.

Q. Did you yourself take it from the drawer?

A. Yes.

Q. Where was Mrs. Kremen at that time?

A. On the stairs.

Q. Going up, coming down or standing there?

A. Going up.

(Testimony of Glenn A. Harter.)

Q. Was she accompanied by anyone?

A. The matron.

Q. Did you then go upstairs and remain up there for a time? A. Yes, sir.

Q. Do you know whether it was on that occasion that the [211] matron subjected Mrs. Kremen to a personal search?

A. I was downstairs at the foot of the stairs. I wouldn't know.

Q. After some time did they both come downstairs? A. That is correct.

Q. Approximately how long were they away?

A. Well, I couldn't answer specifically. I imagine five minutes.

Q. It was while she was on the stairs going up with the matron that you took hold of the wallet, isn't that so? A. That is correct.

Q. When she came downstairs with the matron where did she then go? A. Outside.

Q. With the matron accompanying her?

A. That is correct.

Q. Did she have a purse with her at that time?

A. A purse and the overnight bag.

Q. After the matron and Mrs. Kremen got outside did you come out with the wallet?

A. No, sir.

Q. Who brought the wallet out?

A. Mrs. Kremen.

Q. When did she obtain it?

A. I gave it to her when she went upstairs. [212]

(Testimony of Glenn A. Harter.)

Q. Did you have a conversation with her before she went upstairs? A. No, sir.

Q. But nevertheless as she went upstairs you handed her a wallet? A. Yes, sir.

Q. Before you or she ever had any words with each other?

A. I had the wallet and I handed it to her. I said, "Is this yours?" There was no conversation whatsoever. She took it and kept on walking.

Q. And went upstairs with it?

A. Yes, I imagine she did.

Q. Did you observe that she went upstairs?

A. She went upstairs and she had it in her hand, yes.

Q. And she came back with it in her hand?

A. I didn't see it when she came back.

Q. But when she came back you saw her with a purse?

A. When she came back she had her purse and her overnight bag.

Q. And then she went outside?

A. That is right.

Q. And then you went outside?

A. That is correct.

Q. And then you say she put the purse down?

A. And the bag. [213]

Q. And the handbag. Then did you look through the contents of both of those? A. Yes.

Q. And it was in the purse that you found the wallet? A. Yes.

Q. The wallet that you had handed to her?

(Testimony of Glenn A. Harter.)

A. Yes.

Q. And it is the purse from which these documents were taken that you identified?

A. That is correct.

Q. What did you find in the suitcase or overnight case? A. Just clothing.

Q. At the time that you handed the wallet to her were there other agents of the Bureau in the immediate part of the premises?

A. Yes, sir.

Q. Did they have their guns drawn, any of them? A. No, sir.

Q. Did you? A. No, sir.

Q. You had previously had, hadn't you?

A. Yes, sir.

Q. Was Mrs. Kremen handcuffed at that time?

A. No.

Q. Was she at any time?

A. I didn't observe her handcuffed at any time.

Q. The others taken into custody were at the time you handed the wallet to Mrs. Kremen in handcuffs?

A. I was in the house. I didn't have observation of the other defendants at that time.

Q. But you saw that they were handcuffed, didn't you? A. While I was in the house?

Q. Yes. The door was open, wasn't it?

Q. You can't see out of the house where I was standing.

Q. Was the door open?

A. I imagine the door was.

(Testimony of Glenn A. Harter.)

Q. Coming back to San Francisco you were riding with Mr. Ross? A. That is correct.

Q. And you were sort of joking there talking about fishing, is that right?

A. We were talking.

Q. I mean you raised the subject?

A. Yes.

Q. In a joking sort of way. A. No, sir.

Q. Did you say anything to him about his family? A. Yes, sir.

Q. What did you say?

A. I asked him if he had a family.

Q. Did he answer?

A. He answered that he did. [215]

Q. Do you know that he did?

A. Pardon?

Q. Do you know that he did?

A. He told me that he did. That is my only knowledge of it.

Q. Did he tell you what his family consisted of?

A. A wife and a child.

Mr. Gladstein: That is all.

The Court: Anything else?

Mr. Schnacke: That is all, thank you.

(Witness excused.)

The Court: We will take the mid-afternoon recess.

(Recess.) [216]

Mr. Schnacke: Clarence Dunker.

CLARENCE W. DUNKER

was called as a witness on behalf of the Government, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Q. Please state your name to the Court and to the Jury?

A. Clarence W. Dunker.

Q. Please spell your last name?

A. D-u-n-k-e-r.

Direct Examination

Mr. Schnacke: Q. Mr. Dunker, what is your occupation?

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. And for how long have you been so employed? A. Nineteen years.

Q. And where are you presently assigned?

A. I am assigned at Modesto, California.

Q. And where were you assigned on August 27, 1953? A. At Modesto, California.

Q. Is Modesto an office under the jurisdiction of the San Francisco office of the Federal Bureau of Investigation?

A. It is a resident agency of the San Francisco office. [217]

Q. On August 27, 1953, were you in the vicinity of a cabin at Twain Harte, California?

A. Yes, sir.

Q. And at what time did you arrive at the cabin on that day?

(Testimony of Clarence W. Dunker.)

A. A few minutes after 1 p.m.

Q. And were you present when the defendants Steinberg, Kremen, Ross and Coleman were arrested at that cabin?

A. I was.

Q. What did you do in connection with those arrests?

A. Well, I drove down on the road which is just at the right of the cabin, and I remained there a few minutes while the other boys went to the cabin from other directions, and after a few minutes I walked up to the cabin, and then after I was up there for a short time I went into the house and on instructions, assisted in the search.

Q. And what part of the house did you search?

A. The living room.

Q. And referring to the living room, it is the area on the second page of the set of diagrams at the top portion of the house, is that correct?

A. Yes.

Q. Can you tell us in general how you proceeded with your search of the living room?

A. The first thing I did was to draw a sketch and locate the various pieces of furniture in the room. Then I numbered [218] each one of those pieces with a number, and then I described what that piece of furniture was.

I started with the chair that is near the entrance, and I started my search there, then proceeded around the room.

Q. In a clockwise or counter-clockwise direction?

A. That would be counter-clockwise.

(Testimony of Clarence W. Dunker.)

Q. You say you made a diagram at the time of the search? A. Yes, I did.

Q. Do you have that diagram with you now?

A. Yes, I do.

Q. Would you refer to that diagram—did you refer to that diagram prior to the time you took the witness stand?

A. Oh, yes, I have checked it over.

Q. So your testimony as you are now reciting it to us will be to some extent refreshed by the diagram you drew at the time of your search, is that correct? A. That is right, yes.

Q. (Handing document to the witness) I will show you a group of documents and ask you if you have ever seen those documents before, and, if so, when and where?

Mr. Leonard: Excuse me, Your Honor. If the witness is testifying, as he has indicated, from a written memorandum may we have that memorandum marked for identification so reference can be made to it later on?

The Court: Very well. [219]

Mr. Schnacke: No objection.

The Court: Mark it number 87 for identification.

(Thereupon diagram of agent referred to was marked Plaintiff's Exhibit No. 87 for identification.)

The Court: The question was whether you had seen these papers before.

The Witness: Yes. This was in the three-drawer desk which is shown on this diagram, and from the

(Testimony of Clarence W. Dunker.)

left-hand drawer there was an envelope with return address of Nathan J. Citron, 93 East San Antonio, San Jose. And this envelope contained an insurance policy of the Indiana Lumbermen's Mutual Insurance Company. And that is this thing here, and I initialed it. And travel checks of San Jose Ford Sales addressed to Janet Conroy, 69 North 10th Street, San Jose, postmarked 9/12/53. And a Shell lubrication road form.

Mr. Schnacke: Q. Well, it isn't necessary nor, I think proper for you to recite——

A. (Interposing) All right, yes, I have seen it.

Q. All I asked was whether you had seen those documents, or this document, before. A. Yes.

Q. You said that you had, and that you saw that document and took that document from a desk in the living room? A. Yes, sir. [220]

Q. Is that correct? A. That is correct.

Mr. Schnacke: I will offer this document in evidence at this time solely against the defendant Janet Conroy, Government's exhibit next.

Mr. Leonard: Objected to, if Your Honor please, on the ground it appears to be the results of an illegal search for which no process was issued, and there is no foundation laid in connection with any of the defendants. As counsel of record pointed out, the witness' volunteer answer—(portion of statement inaudible to the reporter)—should be stricken. The document speaks for itself. It cannot lay its own foundation.

Mr. Gladstein: May I add, I understood Mr.

(Testimony of Clarence W. Dunker.)

Schnacke to say he is offering that as against the defendant Janet Conroy?

Mr. Schnacke: As against the defendant Janet Blau. I beg your pardon.

Mr. Gladstein: I think under the circumstances no proper foundation has been laid.

The Court: May I see it? Admitted as against the defendant Blau.

(Thereupon insurance policy referred to above was received in evidence and marked Plaintiff's Exhibit No. 88, admitted as against Defendant Blau.) [221]

Mr. Schnacke: Q. I show you what appears to be a belt and ask you if you have ever seen it before? A. I have.

Q. Where did you see that?

A. I saw that on the straight chair which is in the corner of the room between the radio and the davenport.

Q. And how was that belt situated when you saw it?

A. It was around a pair of trousers.

Q. What type of trousers?

A. They were tan cotton trousers.

Mr. Schnacke: I will ask that the belt be marked for identification Government's exhibit next in order.

(The belt referred to was thereupon marked Plaintiff's Exhibit No. 89 for identification.)

Mr. Schnacke: Q. Now, I will show you Defendant's Exhibit A-12, and ask you if that reflects

(Testimony of Clarence W. Dunker.)

or shows the pair of pants and the belt to which you have just referred?

A. That is the belt and the pair of pants.

Q. And in this photograph I see money protruding from the belt. Was the money in the belt when you saw it?

A. Yes, there was money in the belt. It had two—. Do you want me to testify further?

Q. Yes. How much money was there?

A. In the belt to the trousers were two zipper money pockets containing \$400 and \$50— [222]

Mr. Gladstein: Just a moment. I didn't know the witness was going to read from the document, which is for identification. May I have a continuing objection to this kind of testimony, which is the equivalent of the offer of the exhibits or physical matters, money or whatever it is, for the same reasons we have heretofore advanced?

Mr. Schnacke: I offered it just for identification. He is talking about a belt reflected in the picture you offered into evidence.

Mr. Gladstein: That may be so, but my point is this: the witness is now giving oral testimony to the contents of something, I take it, rather than offering it physically.

The Court: He didn't offer the belt.

Mr. Gladstein: This is something in addition to the belt. He is talking about the contents of the belt, if Your Honor please. The belt is only marked for identification.

(Testimony of Clarence W. Dunker.)

Mr. Schnacke: The photograph of the belt and the photograph of the money——

The Court: He has identified it. He is testifying to something else that relates to the article he identified. I don't get the point.

Mr. Gladstein: I want to object to matters taken, and his enumeration of those matters in this form rather than by offering the matters themselves.

The Court: Oh. Very well. I will overrule the [223] objection.

Mr. Schnacke: Q. Now, then, I will show you a wallet with certain documents inside it and ask you if you saw that wallet and those contents in the course of your search of the living room?

A. I did.

Q. And where did you find those items?

A. This was on the straight chair between the davenport and the radio.

Q. And what was its position on the chair?

A. Well, this was in the trousers, in the back pocket of the trousers which were on the chair.

Q. Are those the trousers that were in the photograph——

A. Those are the trousers that were in the photograph.

Q. ——that you previously looked at?

A. Yes.

Q. And would you examine the documents and tell me where you saw those documents before?

A. Those documents were in the billfold?

Q. All of the documents that are there?

(Testimony of Clarence W. Dunker.)

A. All of the documents that are there were in the billfold.

Mr. Schnacke: I will offer the billfold and the documents just described by the witness for identification, to be marked Government's exhibit next in order.

(Thereupon billfold and documents referred to [224] were marked Plaintiff's Exhibit No. 90 for identification.)

Mr. Schnacke: Q. Now, I will show you a brown wallet containing certain documents, and ask you if you saw that in the course of your search of the living room at the cabin?

A. Yes. This was found in a pair of tan gabardine trousers which were laying on the chair near the entrance to the cabin as shown by the chart.

Q. Will you examine the documents that I handed you? Will you tell me if you observed those during the course of your search?

A. Yes, I did, and they were in the billfold.

Mr. Schnacke: I will ask now that the billfold and the documents just referred to by the witness be marked Government's exhibit next in order for identification only.

(Thereupon billfold and documents referred to were marked Plaintiff's Exhibit No. 91 for identification.)

Mr. Schnacke: No further questions. Thank you.

Cross Examination

Mr. Gladstein: Q. Just a question or two, Mr.

(Testimony of Clarence W. Dunker.)

Dunker: What time did you arrive there at Twain Harte?

A. You mean at the cabin where the individuals were?

Q. Yes. [225]

A. It was about 1:05 to 1:08, I believe, when I drove up there.

Q. What time did you leave Modesto?

A. I left Modesto approximately 11 o'clock.

Q. That morning?

A. The following—I mean the preceding evening.

Q. Eleven o'clock p.m.?

A. Eleven o'clock p.m. the preceding evening.

Q. On this same task or assignment?

A. Yes.

Q. Had you been to the premises before the 27th of August? A. No, I had not.

Q. When you left Modesto about 11 o'clock p.m. were you alone or with someone else?

A. I left alone.

Q. And you joined others somewhere, did you?

A. Yes, on route.

Q. You didn't go to the house that night?

A. No. You mean the Germany cabin? No, I did not.

Q. The first time you ever went there was the following afternoon at the time you have stated?

A. Yes.

Q. Were you in the area of Twain Harte during the morning, the early hours, of the 27th?

(Testimony of Clarence W. Dunker.)

A. Yes. [226]

Q. Were you with other agents near the premises?

A. Well, I drove by the premises, a road that leads some distance from the premises, but I didn't go up to the premises. It sets back a considerable distance from the road.

Q. What time of day was it when you drove by some little distance from the premises?

A. It was approximately 3 o'clock in the morning.

Q. When you drove by, did you occupy at any time a position from which you could see the house or its occupants? A. No.

Mr. Schnacke: Your Honor please, I am going to object because I don't see the propriety of this in view of the scope of the direct examination of this witness. He testified to a search of the living room.

The Court: Well——

Mr. Schnacke: What happened at 3 o'clock——

The Court: It is beyond the direct examination.

Mr. Gladstein: May I be permitted one more question?

Mr. Gladstein: Q. Were you alone or with others at approximately 3 o'clock in the morning?

A. I was with others.

Q. Will you tell me the names of the others?

A. Yes.

Mr. Schnacke: Well, if Your Honor please, I will make the objection that that is immaterial. I

(Testimony of Clarence W. Dunker.)

just don't understand [227] how this is proper cross examination in view of the scope of the direct.

Mr. Gladstein: There has been testimony concerning the first time certain agents appeared, and I believe it would be proper. Very limited.

The Court: It is a sort of discovery proceeding. I don't see that it bears—if it has any reasonable bearing on the direct examination, of course, the Court should allow it, but I just don't see it.

Mr. Schnacke: The agents are available to the defense to call as witnesses——

Mr. Gladstein: Mr. Schnacke says the agents are available for the defense to call as witnesses, but obviously I can't do that until I know who they are, and that is all I am asking for, who was with him at the time he went by there at 3 o'clock in the morning.

Mr. Schnacke: Then are you going to inquire as to the day before that and the day before that and six months before that?

The Court: Well, let's not get into an argument. I will sustain the objection.

Mr. Gladstein: Your Honor, this is a slightly different question.

Mr. Gladstein: Q. May I ask if the other persons who were with you at 3 o'clock in the morning were FBI agents, [228] without regard to their names?

Mr. Schnacke: Same objection.

(Testimony of Clarence W. Dunker.)

The Court: What difference does that make?
Let's get through with this testimony.

The Witness: They were.

Mr. Gladstein: That is all, Your Honor.

The Court: Anything further?

Mr. Schnacke: No, that is all, thank you.

(Witness excused.)

Mr. Schnacke: Mr. Daly.

JOSEPH T. DALY

was called as a witness on behalf of the Government, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Q. Please state your name to the Court and to the jury? A. Joseph T. Daly.

Q. Will you spell your last name?

A. D-a-l-y.

Direct Examination

Mr. Schnacke: Q. Mr. Daly, what is your occupation?

A. Special Agent of the Federal Bureau of Investigation.

Q. How long have you been an agent of the FBI? [229]

A. Eleven and one-half years.

Q. To what office are you assigned?

A. San Francisco Division.

Q. For how long have you been assigned to San Francisco? A. Nine years.

(Testimony of Joseph T. Daly.)

Q. Were you assigned to San Francisco in August and September of last year? A. I was.

Q. In the latter part of last year did you have occasion to go to a cabin at Twain Harte, California? A. I did.

Q. Is that the cabin at which four of the defendants in this case had previously been arrested?

A. That is correct.

Q. And on arriving at the cabin—. On what date did you go to the cabin?

A. August 27, 1953.

Q. And did you go to the cabin at a later date?

A. I did.

Q. What date was that?

A. On, I believe, September 2nd, 1953.

Q. And on September 2nd, 1953, what did you do at the cabin?

A. I was assigned to go through the garbage cans at the rear of the cabin and dust the cans for fingerprints.

Q. Did you do that? [230] A. I did.

Q. I will show you a box containing ten cans and ask you if you will look at those cans and tell me if you have ever seen those before, and, if so, when?

A. Yes, these are the cans that I found at Twain Harte on September the 2nd.

Q. Now, referring to the diagram before you, can you tell us where on the premises you found those cans?

A. On the chart, which shows the whole grounds,

(Testimony of Joseph T. Daly.)

the first page, it is assigned "outhouse". It is in the rear. It is labeled "outhouse." About 20 feet in the rear of the cabin.

Q. And were these cans inside that house or adjacent to it?

A. They were inside the house, in a garbage container.

Q. I see. That outhouse was used for what purpose?

A. It was a toilet that wasn't being used at the present time, but was being used to house the garbage can.

Q. And it was in the search of that little outhouse that you discovered these cans?

A. That is correct.

Q. You have mentioned dusting for fingerprints. Will you tell us what that means?

A. That is a process where you take a fine powder with a little brush, dust over the surface of the can in an attempt to have latent fingerprints be shown out. I preserved them [231] after that and identified the cans.

Q. And how did you preserve them?

A. With scotch tape over the prints.

Q. And did you mark the cans in any way?

A. I did.

Q. How did you mark them?

A. I marked them with my initials "JPD", and I scratched the date on the cans with a nail.

Q. And your initials then, would appear on each can that you have just examined?

(Testimony of Joseph T. Daly.)

A. That is correct.

Q. Did you develop latent prints on each of the cans that I have shown you previously?

A. On each of the cans there were latent prints shown to be on the cans.

Q. What did you do with the cans after you had assembled them at the cabin?

A. After putting the scotch tape over the prints, I returned them to one of my supervisors in San Francisco.

Q. Do you know what happened to them after that time?

A. No, not of my own knowledge.

Q. Mr. Schnacke: I will ask that the ten Budweiser beer cans described by this witness be received in evidence as a group at this time. I think it would be convenient for them to remain in the box. On the assurance that they will be [232] connected up by further testimony.

Mr. Gladstein: Well, may I ask counsel again which one or more of the defendants he intends to connect these up with, because my point of objection would depend on that statement.

Mr. Schnacke: The cans will be connected up with each of the defendants. One or more of the cans will be connected up with each of the defendants.

Mr. Gladstein: Each of the five?

Mr. Schnacke: Each of the five.

Mr. Gladstein: I make the same objection as I made before. There is no proper foundation laid.

(Testimony of Joseph T. Daly.)

The Court: Well, they are just—instead of putting them in for identification, he is putting them in evidence for the purpose of showing the limited purpose of where they came from, that is all.

Mr. Gladstein: He is not offering them just for identification, he is offering them in evidence.

The Court: But their value in evidence is only to the limited extent at this point. What are you wasting a lot of time about this for? Are you going to connect these up further with some other evidence?

Mr. Schnacke: Yes, with each of the defendants and with Robert Thompson.

The Court: All right, admitted for the purpose stated, [233] to get it over with.

(Thereupon the beer cans referred to above were received in evidence and marked Plaintiff's Exhibit No. 92.)

Mr. Gladstein: May the record show I have made the same objections to this last exhibit as to the previous exhibits?

The Court: Very well.

Mr. Schnacke: No further questions.

The Court: If it isn't connected up the Court will strike it out.

Mr. Gladstein: Of course my objection goes beyond that, Your Honor.

The Court: Anything else of the witness?

Mr. Schnacke: No, I have no further questions.

(Testimony of Joseph T. Daly.)

Cross Examination

Mr. Gladstein: Q. Mr. Daly, did you say you were up there on the 27th of August?

A. I was.

Q. And what did you do when you were there on the 27th?

A. On the 27th I was assigned as an auxiliary with no specific duties, to assist anyone that I should.

Q. And whom did you assist?

A. Mr. Whalen. [234]

Q. He was the agent in charge?

A. Agent in charge.

Q. Did you participate in the search that was made at that time? A. No, I did not.

Q. Did you observe a search was being made?

A. Yes.

Q. What portion of the yard or the premises did you observe under search?

A. I noticed that there were agents searching inside the house.

Q. Yes? Anything else?

A. Not to my recollection.

Q. Now, this was broad daylight at the time the people were taken into custody, wasn't it?

A. That is correct.

Q. The outhouse was plainly visible from the premises and the place where you were, is that so?

A. That is right.

Q. Did you go over there?

A. I did not.

(Testimony of Joseph T. Daly.)

Q. Did you observe anyone ever go over there?

A. No.

Q. What is that? A. I did not, no. [235]

Q. Did you say no one ever went there?

A. No, I did not. I didn't observe anyone go over there at the time.

Q. How many agents were there there at the time?

A. In the vicinity, approximately 15.

Q. How far was the outhouse from the premises?

A. About 20 feet.

Q. Was there a garbage can in the house?

A. I don't recall if there was or not.

Q. Did you see that the premises were searched thoroughly?

A. That wasn't my assignment at the time.

Q. I am asking you if you observed, if you saw whether the premises were thoroughly searched?

Mr. Schnacke: I object to that as calling for an opinion and conclusion of the witness.

The Court: Sustained.

Mr. Gladstein: Q. Were there agents outside of the house for a portion of the period?

A. Yes.

Mr. Schnacke: I object to that, as I should have objected all along, as being outside the scope of the direct examination.

Mr. Gladstein: The witness was asked if he was there on the 27th. That was on direct examination. I am now inquiring about it. He was asked if he had been there and he said he was there the 27th,

(Testimony of Joseph T. Daly.)

and he was asked if he [236] came at a later time.

The Court: Well, that doesn't, I think, open the door to most extensive cross examination, which should be confined to whether or not the man was there that day. That is the subject matter.

Mr. Gladstein: The 27th?

The Court: Yes.

Mr. Gladstein: Which man, Your Honor?

The Court: The man that is on the witness stand.

Mr. Gladstein: Yes, he said he was there.

The Court: That doesn't mean that that subject opens up everything under the sun. The only subject opened up for cross examination is whether he was there that day.

I am just saying that for the purpose of shortening the time. My inclination is to allow great liberality in cross examination if there is anything in the testimony that relates to the subject matter, but that is going a little too far afield.

Mr. Gladstein: Q. After the defendants—you saw the defendants taken into custody on the 27th, didn't you? A. I did.

Q. Did you remain after they had been taken away? A. I did.

Q. Were there others who remained with you?

A. There were. [237]

Q. How long, approximately, did you remain there? A. Till midnight.

Q. Approximately how many were there with you?

(Testimony of Joseph T. Daly.)

A. I believe three or four other agents.

Q. Were you stationed in or out of the house, or both in and out? A. Both.

Q. Did you go to the outhouse?

A. I did not.

Q. Did you observe any other agent go to the outhouse? A. No, I did not.

Q. Who were the agents who were with you there at midnight?

A. Mr. Dunker—Agent Dunker. N. L. White. Robert Savage. I believe there was another agent, but I do not recall his name.

Q. While you were there up to midnight—withdraw that.

By the way, without inquiring as to anything confidential about your duties with the Bureau, I would like to ask you whether your assignment at that time, or maybe generally, has something to do with the obtaining of fingerprints?

A. No, other than general criminal investigative work. I am not a fingerprint technician.

Q. But in your general work apparently you know something about obtaining them, is that right?

A. Latent prints, that is right. [238]

Q. What did you do, if anything, to obtain latent prints when you were there up until midnight? A. Nothing.

Q. What did anybody else, to your observation, do?

(Testimony of Joseph T. Daly.)

A. I didn't note anyone else taking prints in the house or around the house.

Q. So it is your testimony that nothing was done until you left the house at midnight on the 27th to look for and find any latent fingerprints?

Mr. Schnacke: That isn't his testimony at all, Mr. Gladstein. His testimony was that he didn't observe anybody doing it.

Mr. Gladstein: Q. Is Mr. Schnacke stating it correctly? A. That is correct.

Q. Did you later learn, sir, that some other agents of the FBI had sought to obtain latent fingerprints at or about the premises that day?

Mr. Schnacke: I will object to that as calling for hearsay and an opinion and conclusion of the witness.

The Court: Sustained.

Mr. Gladstein: Q. Now, the other agents and you, did you take up until midnight some station or something to prevent or keep people out?

Mr. Schnacke: I am going to renew my objection that this is immaterial, beyond the scope of the direct examination. [239]

The Court: Well, I think that counsel may be within limits if he wants to show what the situation in the locality was, for whatever he feels it is worth.

Mr. Gladstein: Thank you, Your Honor.

The Witness: My duties up to midnight were, after Mr. Whalen left with the agents, I was

(Testimony of Joseph T. Daly.)

guarding the premises. Assisting in guarding the premises.

Mr. Gladstein: Q. Guarding the premises against what? A. Intruders.

Q. Were the premises kept under guard by you until midnight—you and the others?

A. That is correct.

Q. And by the premises, what do you mean?

A. The house at Twain Harte. The cabin where the agents were located.

Q. The house itself?

A. Yes, the house itself. [240]

Q. The house itself?

A. The house itself.

Q. What about the outhouse? Did you guard that? A. Not specifically.

Q. Did any of the agents with you guard the outhouse?

A. The way the grounds are set up, there is one roadway to it. We were in the house, and looking around in the area around the house, we were not specifically guarding the outhouse; we were guarding the general area.

Q. Let me put it this way: While you were there until midnight or thereabouts, you and the other agents who were with you did have the house under guard? A. Yes.

Q. To prevent intruders, as you said, and did anybody come and intrude? A. No.

Q. Did you have the outhouse under such ob-

(Testimony of Joseph T. Daly.)

servation as to be able to say to us under oath whether anybody went in there?

A. I would say that no one had gone in there, although we did not have it under direct observation all the time.

Q. So you do not know, is that it?

A. That is correct.

Q. You left about midnight of the 27th?

A. Yes.

Q. Was there anybody left there in charge?

A. No.

Q. All the agents left at the time?

A. Yes.

Q. Nobody came to replace you, or whatever the expression is?

A. No, no one came to replace us.

Q. So from midnight on the house was left unguarded? A. Yes.

Q. The outhouse as well? A. Yes.

Q. Was that the situation that obtained until the 2nd of September, to your knowledge?

A. Yes.

Q. On the 2nd of September you returned for the first time to the premises? A. Yes.

Q. You had an assignment to perform?

A. Yes.

Q. What was the assignment?

A. To dust the cans in the garbage can?

Q. Who told you there were cans in the garbage can? A. Mr. Al Clark.

Q. Is he an agent? A. Yes.

(Testimony of Joseph T. Daly.)

Q. When did he tell you that?

A. On the 2nd he asked me to go up and I left and went up. [242]

Q. Did he specifically mention cans in the garbage can? A. Yes.

Q. Did he tell you where the garbage can was located? A. Yes.

Q. Where did he say they were located?

A. In the outhouse.

Q. Was he with you on the 27th?

A. Earlier in the day.

Q. He was with you on the 27th at the premises?

A. Yes, in the original raiding party.

Q. In the original raiding party?

A. Yes.

Q. Did you go to the outhouse on the 27th, inside of it?

Mr. Schnacke: I submit that has been asked and answered.

Mr. Gladstein: I am not sure I did ask it, if Your Honor please. If I did, I ask permission again to ask it.

The Court: Q. Do you remember whether you went there on the 27th?

A. I don't recall whether I specifically went there or not.

Mr. Gladstein: Q. Did you finish your answer?

A. Yes.

Q. Did you observe Mr. Clark go there?

A. No, I did not.

Q. At the time you left at midnight did you

(Testimony of Joseph T. Daly.)

take any of the contents of the house with you?

A. No, I did not.

Q. Did any of those with you take anything from the house?

A. I don't recall. I left by myself. The other agents left. We had our own cars, and I don't recall whether they did or not.

Q. Did you observe Mr. Erickson there that day?

A. Yes, I did.

Q. Did you observe him taking or requiring others, asking others to take large quantities of documents and other things out of the house?

A. Will you restate the question?

(Question read.)

The Court: That is a pretty complicated question: Did he see anybody or did he see anybody required——

Mr. Gladstein: I will withdraw it.

Mr. Gladstein: Q. Did you see Mr. Erickson taking things out of the house and taking them away?

A. No, I did not.

Q. Did you see anybody else do that? I mean any other agent?

A. No, I don't recall seeing any agent taking anything out of the house.

Q. Were there any cans, open or closed, of beer in the premises that you were in?

A. Yes.

Q. On the 27th?

A. On the 27th, yes. [244]

Q. Where did you see them?

A. There were cans in the kitchen, some opened,

(Testimony of Joseph T. Daly.)

some—I think there was a case of six cans that were in the kitchen—beer cans you are speaking of——?

Q. Yes.

A. Beer cans in the kitchen also.

Q. Can you tell us how many there were?

A. No, I didn't count them. I imagine empty beer cans around the kitchen, there appeared to be four or five.

Q. Did you place any mark on any of them?

A. No, I did not.

Q. Did you see anybody else do so?

A. No, I did not.

Q. When you got back on the 2nd of September did you observe whether or not those beer cans were there? A. I did not.

Q. You went directly to the outhouse?

A. That is correct.

Q. This was Mr. Clark telling you that there were some cans in the garbage can?

A. The garbage was contained in the outhouse in the rear of the cabin, and to dust those cans for latent fingerprints.

Q. He told you there were such cans, did he?

A. Yes.

Q. Was there anything else that he told you that you can [245] recall as to what your assignment or instructions were?

A. No, I don't recall anything in addition.

Q. What kind of garbage can was this in which you found these cans?

(Testimony of Joseph T. Daly.)

A. I believe it was a heavy composition paper-type barrel, garbage disposal, make-shift barrel where they store the cans.

Q. Was it a barrel or a crate?

A. A barrel, a round affair. It could possibly have been metal. It was a round barrel affair.

Q. Did you dust the barrel for any latent fingerprints?
A. No, I did not.

Q. Did you dust the outhouse, any part of it, for latent fingerprints?
A. No, I did not.

Q. Did you dust anything in the house itself for any latent fingerprints?
A. No, I did not.

Q. Did you dust any of the documents or boxes, suitcases, and so forth, for latent fingerprints?

A. No.

Q. What equipment did you take up there with you?

A. It is a small kit with fingerprint dusting powder, a small camel's hair brush, it also includes a flashlight and a small camera to take photographs of fingerprints.

Q. A camera to take photographs of fingerprints? [246]

A. Yes. It is included in the kit. You asked me what equipment I took.

Q. Yes. A. That is what I took.

Q. Did you go alone or were you accompanied by somebody?
A. I was alone.

Q. In doing your work there at the outhouse with these cans, you were alone?
A. I was.

(Testimony of Joseph T. Daly.)

Q. Where did you perform the actual taking of the latent fingerprints?

A. Out on the ping-pong table that was there on the side of the cabin in the game and parking area, as shown on the map.

Q. Before you went there on the 2nd were you provided with any fingerprints of any kind?

A. No, I was not.

Q. Had you seen any of these defendants?

A. No.

Q. Will you tell us how you proceeded to take the cans from the location in which you first found them to the place where you did the dusting?

A. I took the whole garbage can, brought it up next to the ping-pong table, took each can one by one, and dusted them with the powder. Then I put them in a container. If there appeared to be latent prints produced on the cans, I would put scotch [247] tape over the prints. I identified the cans with my initials and the date and put them in another container.

Q. Do you recall how many cans you found latent fingerprints apparently on?

A. I do not.

Q. Can you tell us anything at all about the latent fingerprints you did find on any can?

(Question read.)

Mr. Schnacke: I think that is a kind of broad question.

Mr. Gladstein: Maybe it is broad, in which case I will particularize it.

(Testimony of Joseph T. Daly.)

Mr. Gladstein: Q. You have told us that you examined a number of cans? A. Yes.

Q. Do you remember the exact number?

A. I do not.

Q. You do not remember the number of cans on which you found any fingerprints at all?

A. No, I do not.

Q. Is it correct that there were cans on which you found no fingerprints? A. Yes.

Q. But you do not know how many?

A. Yes.

Q. You are saying on some cans you did find some fingerprints? [248] A. Yes.

Q. You can't tell us on how many?

A. No.

Q. Can you tell us what prints, that is, in number or anything about them that you found on any particular can or any of them?

Mr. Schnacke: You mean whose prints, Mr. Gladstein?

Mr. Gladstein: No, I didn't ask him that.

Mr. Gladstein: Q. For instance, let me ask this: Did you make a record or a notation, a report or notation on a can to indicate—I say this by way of illustration to you—that you saw what appeared to be a thumbprint or an entire set of prints?

A. No.

Q. You did not do that? A. No.

Q. Do you have any recollection of whether you found on any of the cans any full set of prints?

A. Yes, I can recall that I did not.

(Testimony of Joseph T. Daly.)

Q. You did not? A. Yes.

Q. Can you recall the extent to which you found any prints on any of the cans?

A. Yes, some would have one fingerprint, some would have two, three, maybe four. On different portions of the can there [249] would be several. It varied with the different number of cans.

Q. So that those cans on which you found what appeared to be some latent prints you placed a piece of scotch-tape on them?

A. Over the print, yes.

Q. Then what did you do with the cans?

A. I put them in a container and returned them to Al Clark in San Francisco, Agent Clark in San Francisco.

Q. When? A. The very day.

Q. What did you do with the cans on which you found no prints?

A. Disposed of them, left them there.

Q. Where? A. Where I obtained them.

Q. Where was that?

A. In the outhouse.

Q. You took them right back to the outhouse?

A. Yes.

Q. And put them in the barrel? A. Yes.

Q. Were all the cans that you took back to San Francisco empty or were some full?

A. All empty.

Q. The last time that you ever saw those cans then up to [250] today was when you turned them over to Mr. Clark? A. Yes.

(Testimony of Joseph T. Daly.)

Q. And before coming in this afternoon you had not again seen these?

A. Yesterday I glanced at them—yesterday I did glance at the cans, yes.

Q. Where were you when you glanced at them?

A. I think they were in Mr. Schnacke's office.

Q. What kind of piece of paper or other marking was it that you placed on the can?

The Court: He said several times scotch-tape.

Mr. Gladstein: Q. Is the tape still on them?

A. I believe so, yes.

Q. On all of them you can identify it?

A. Yes.

Q. Did you wrap these cans in the cellophane in which they now are? A. No.

Q. Will you examine those and tell us if you find a tape on each one of them?

A. Each individual can or do you want one as an example?

Q. Give me one as an example, if you will, first.

A. Right here (indicating). It is hard to see. There is scotch-tape there, see? This is holding—this is broad scotch-tape going completely around the can. [251]

Q. This one that you are showing me?

A. Yes, right here.

Q. Will you take the trouble to look through each of those and see if you find a piece of scotch-tape on each?

(Testimony of Joseph T. Daly.)

The Court: Q. Does that have any effect on whatever is under the scotch-tape?

A. No, it is being preserved. I am just ascertaining if there is a scotch-tape, as he requested, on each can.

(After examining the cans referred to:)

A. (Continuing): Yes, there is scotch-tape on each can.

Mr. Gladstein: Q. How many cans are there?

A. Ten.

Q. Is there any mark on the cans that identifies them to you? A. There is.

Q. What is it?

A. My initials, J.T.D., and then the number 9253, which stands for September 2nd, 1953.

Q. That appears on each of them?

A. Yes.

Q. Where did you place those initials on the cans? A. On the end of each can.

Q. I mean where were you when you did that?

A. Right there at the scene after dusting them by the cabin.

Q. Did you dust anything besides those cans?

A. Yes.

Q. What else? [252]

A. Other articles in the garbage can.

Q. What?

A. Well, there was a mustard jar, I think there was a catsup bottle, mostly beer cans. That is all that I can recall.

(Testimony of Joseph T. Daly.)

Q. Did you dust anything for prints that was anywhere else than in the garbage can?

A. No, I did not.

Q. When you went to the premises there on the 2nd of September did you have any authority by way of search warrant? Did you have a search warrant with you? A. No, I did not.

Q. Did you seek the permission of anyone to make that search?

Mr. Schnacke: I will object to that as being immaterial, Your Honor please.

The Court: Sustained.

Mr. Gladstein: Q. Do I understand you are regularly connected with the Department here in San Francisco? A. That is correct.

Q. And generally available here?

A. That is correct.

Q. So if there were any requirements of getting further testimony from you, you would generally be available here?

A. Yes, I am assigned to the San Francisco office. I am a resident agent at Stockton, but I am available. I am assigned to San Francisco but I reside at Stockton, California, but I [253] am available.

Q. Just one further question: When you went up there on the 27th did you go from San Francisco or Stockton? A. The 22nd?

Q. The 27th.

Mr. Schnacke: I will object to that as immaterial.

(Testimony of Joseph T. Daly.)

The Court: Sustained.

Mr. Gladstein: Q. When you went up there on the 2nd did you proceed from San Francisco or Stockton?

Mr. Schnacke: Same objection.

The Court: Same ruling.

Mr. Gladstein: That is all.

Redirect Examination

Mr. Schnacke: Q. Did you manufacture these fingerprints on here? A. I did not.

Q. Did you use any trick or device to get somebody to put those fingerprints on there?

A. I did not.

Q. Do you have any way of knowing what agents of the F.B.I. might or might not have been in the outhouse on the 27th? A. I do not.

Q. Or on the 28th, 29th or 30th?

A. I do not. [254]

Mr. Schnacke: That is all.

The Court: Anything else?

Mr. Gladstein: Yes.

Recross Examination

Mr. Gladstein: Q. Do you have any way of knowing how the beer cans got into the container in which you found them on the 2nd of September?

A. No, I do not.

Q. Do you have any way of knowing how they were brought to the premises by the 2nd of September? A. Excuse me?

(Testimony of Joseph T. Daly.)

Q. How they were brought to the premises?

A. No.

Q. Do you have any way of knowing when they first came to the premises and went into that container? A. No.

Q. Do you have any way of knowing whether those prints are a day old, five days old or five months old at the time you found them?

A. A day—repeat that, please.

Q. Do you have any way of knowing whether at the time you found the prints on those cans they were a day, five days or five months old?

A. As I understand, a print five months old will not come out like these prints came out. Not being an expert, I would say [255] I have no way of telling what length of time the prints were on the cans, no.

Q. Do you have any way of knowing where a person could have been who put fingerprints on or held any of those cans on which the prints went?

A. No.

Q. Do you have any way of explaining to us why you did not take those cans into your custody and dust them for fingerprints on the 27th of August, at the time of the arrest?

Mr. Schnacke: I object to that.

The Court: That is argumentative. Sustained.

Mr. Gladstein: That is all.

The Court: We will take an adjournment now, ladies and gentlemen of the jury, until tomorrow

morning at 10:00 o'clock. Please return at 10:00 o'clock.

(Whereupon this cause was adjourned to the hour of 10:00 o'clock a.m., Thursday, April 15, 1954.) [256]

The Clerk: United States vs. Kremen, et al., further trial.

Mr. Schnacke: Ready, Your Honor. Call Henry Warren.

Your Honor please, this is a witness going on somewhat out of order, but for his convenience and because he is a short witness we will put him on at this time.

HENRY JAMES WARREN

called as a witness on behalf of the Government, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Q. Please state your name to the Court and to the jury.

A. Henry James Warren.

Q. Speak up a little louder, please.

A. Henry James Warren.

Q. W-a-r-r-e-n? A. Yes.

Direct Examination

Mr. Schnacke: Q. Mr. Warren, what is your occupation?

A. Senior plant quarantine inspector, California Department of Agriculture. [259]

Q. You are employed by the State of California? A. Yes, sir.

(Testimony of Henry James Warren.)

Q. On August 20th, 1953, where were you stationed?

A. At Dorris, California; the inspection station there, sir.

Q. Where is that inspection station located with respect to the California State border and the highway in California?

A. It is on Highway No. 97. It comes from Klamath Falls down the Lead.

Q. How far is that from the State Line?

A. About four miles, sir.

Q. What is an inspection station, as you have described it?

A. The State of California maintains an inspection station at each of their ports of entry for the covering of laws and regulations set up by the Department of Agriculture to prevent the entry of insects and plant diseases into our state.

Q. With respect to incoming automobiles, what do you do? What does the inspection station do?

A. We stop all incoming cars and merely check the baggage, the car contents, household goods, to see if there are any plant materials within the car or the baggage.

Q. And is some record made of this inspection?

A. Yes, sir, we maintain a record.

Q. Are those records maintained in the ordinary course of business of the inspection station?

A. Yes, sir. [260]

Q. At my request have you brought certain records with you?

A. Yes, sir.

(Testimony of Henry James Warren.)

Q. Do you have them on your person?

A. I have left them on the chair. Would the Court excuse me long enough to get them?

Mr. Schnacke: Yes, please.

(Witness left the witness stand and returned.)

Mr. Schnacke: Q. What record have you got with you?

A. We have the daily record that we maintained for August 20, 1953.

Q. Are those records just of that day?

A. Yes, sir.

Q. And what information is reflected on those records?

A. On each car that enters the state a record is maintained of the license of the car and the number of occupants of the car.

Q. The license number and the number of occupants? A. Yes, sir.

Q. And included within the license number, is the state issuing the license also designated?

A. Yes.

Q. Unless it is the State of California, I take it, and then there is no such designation?

A. Yes.

Q. Is the time of entry noted in any way? [261]

A. Yes, sir, we have the time the sheet was started and when it is completed. There are 50 cars to a sheet.

Q. By looking at that sheet you can tell within

(Testimony of Henry James Warren.)

a time period when that car entered, but not the exact time the car entered, is that right?

A. Yes, sir.

Q. Mr. Warren, I notice a column divided into two parts that is headed, "Passengers." Under that is "Cal" and then the other column "For." What is that for?

A. It is what number of passengers is from California or foreign passengers. We designate them the same as the license. We make a division between California cars returning and a foreign car entering.

Q. And all passengers in a car bearing a California license are deemed to be Californians, is that the procedure? A. Yes, sir.

Q. You don't ask each person coming in what his state of residence is? A. No, sir.

Mr. Schnacke: I will offer the document described by this witness as Government's exhibit next in order; and I will ask that the document, being a State of California document, may be withdrawn at a later time and a photostat of the entire document substituted.

Mr. Leonard: We object to the introduction in evidence of [262] the document on the ground no proper foundation has been laid. It is incompetent, irrelevant and immaterial.

The Court: Well, there is only some part of it, I suppose, you want?

Mr. Schnacke: Only some part of it, yes, Your Honor.

(Testimony of Henry James Warren.)

The Court: Can't you read what you want?

Mr. Schnacke: Suppose I introduce the document for identification at this time, and for identification only at this time?

The Court: Whatever you wish. I was just wondering whether you want to encumber the record with something that has many pages if there is only a small part of it you wish.

Mr. Schnacke: Well,—

The Court: Can't you agree on the particular part that you want?

Mr. Gladstein: We will agree, Your Honor, that counsel may refer to just that portion of it he wants to refer to. We don't raise any requirement that the whole document be used, nor do we have any objection to its being withdrawn and photostatic copies substituted. It is simply the legal objection.

The Court: Why don't you read what you want into the record? Wouldn't that serve the purpose?

Mr. Schnacke: Yes, it would.

The Court: I am thinking about a long document going into [263] the record when you only want a part.

Mr. Schnacke: I will offer in evidence at this time the top notation in the right-hand column on Sheet No. 10 of the document described by the witness.

Mr. Leonard: To which we object, if Your Honor please, on the ground no foundation has been laid. It is incompetent, irrelevant and immaterial.

(Testimony of Henry James Warren.)

Mr. Schnacke: I will promise to connect it up.

The Court: May I see it?

(Document handed to the Court.)

The Court: The top line of——

Mr. Schnacke: The right-hand column.

The Court: You are offering it for the purpose of showing that on that day a car described came into California?

Mr. Schnacke: Yes, Your Honor.

The Court: All right, I will overrule the objection.

Mr. Schnacke: On page 10 of the document described by this witness, which reads, "Time started 3:30 p.m.; time finished 4:20 p.m., dated August 20, 1953."

The entry to which I have referred shows, "Passengers, foreign — f-o-r — four. Car number. State. Car number C-54-274. State: Missouri."

Is there any objection to this document being returned to the files of the State of California?

Mr. Gladstein: No objection on that score. We might want [264] to use it for examination, Mr. Schnacke.

Mr. Schnacke: It will remain, then, marked for identification until——

Mr. Gladstein: No, I didn't mean that.

The Court: He simply means he wants to wait until he examines.

Mr. Schnacke: Oh. I have no further questions of Mr. Warren.

(Testimony of Henry James Warren.)

Cross-Examination

Mr. Gladstein: Q. Mr. Warren, approximately how many inspection stations are there, if you can tell us, at the boundaries of the State of California?

A. Yes, sir. The State maintains around 18 summer seasonal, opened around during the summer months and close down, but as a general rule about 18.

Q. So there would be about 18 during the month of August? A. Yes, sir.

Q. Can you tell us when you first received an inquiry, if you did receive one, concerning this item that you have brought a record of?

A. Several months ago there was an F.B.I. agent come to the station there and asked to see our records, showed his credentials, and on a certain date, and we got them out, which we cooperate with everyone, and let him examine them, and at [265] that time no mention was made——

Q. (Interposing) I understand. All I want to know is when it happened. A couple of months ago?

A. Yes.

Q. Can you fix that as precisely as you can? This is April. About mid-April of 1954.

A. Several months ago, sir. It is rather difficult. It is rather routine. We don't set it aside. Within the last six months, seven months. Within that period. Could only be three. You are trying to establish when they asked for the record, sir?

Q. Yes. When they came down and wanted to look at your records.

(Testimony of Henry James Warren.)

A. Sometime after that August date. Within the last four, five, six months, maybe.

Q. Can you tell us whether it was in 1954 or 1953?

A. No, sir. It would make no difference, would it?

Q. You will pardon me, sir——

The Court: He just wants to know if you remember. If you don't remember——

The Witness: A. No, sir, I don't remember.

Mr. Gladstein: Q. When the F.B.I. agent said he wanted to look at your records, did he indicate to you what particular record he wanted to look at?

A. Yes, sir, he asked to see our daily record of the cars entering the State on a particular day or within a certain [266] period.

Q. Which was it?

A. I mean to say, he wanted the records of a certain period of days. Probably covering within that period.

Q. I don't want any "probably." Did you have a conversation with him? A. No, sir.

Q. Then you don't know what he asked for, do you?

A. I know he wanted to see the records. I come in when he was looking through the record.

Q. He had already had it? You saw him, at the time you came in, already there?

A. Yes, sir.

Q. And was it some other member of your station or employee there who was with him?

(Testimony of Henry James Warren.)

A. Yes, sir.

Q. Somebody else had turned this record over to him?

A. Yes. We make it available to anybody that asks.

Mr. Gladstein: I move that be stricken, Your Honor.

The Court: Well, it isn't important.

Mr. Gladstein: No, it isn't important.

Mr. Gladstein: Q. Then you don't know yourself what that F.B.I. agent asked for prior to the time you got there, isn't that right?

A. I would assume he asked to see the record. He was looking [267] at it.

Mr. Gladstein: I am going to move to strike that, Your Honor.

The Court: Well, it is obvious he doesn't know.

Mr. Gladstein: Q. Did you talk to this F.B.I. agent yourself? A. Yes, sir.

Q. All right. At the time you first saw the F.B.I. agent, did you observe whether he had records for one day, three days or a week, or anything of that sort?

A. He had them for quite a period of time.

Q. I see. Did he tell you whether he was looking for a particular registration number?

A. No, sir.

Q. When he left, did he take with him any of your records? A. No, sir.

Q. At the time that he left had any marks been

(Testimony of Henry James Warren.)

made by him on your—or anybody else in your presence, on any of your records? A. No, sir.

Q. The information that has been read by Mr. Schnacke appears on a page on a line in which there are two parallel lines in red crayon or pencil, is that so? A. Yes.

Q. At the time the F.B.I. agent left you those marks were not [268] on this page?

A. No, sir.

Q. What is that?

A. They weren't on the page when he left.

Q. Did you put them on there? A. Yes.

Q. When?

A. About a week ago, when we received the letter to come down here, so I could identify them at a future time.

Q. Is this your writing on this first line?

A. No, sir.

Q. That is the information that Mr. Schnacke read in. That wasn't written by you? .

A. No, sir.

Q. So you can't state, can you, of your own knowledge, that that information was accurate, yourself?

A. Yes, sir, I can. I depend completely on what my men write there.

Q. Ever make a mistake?

A. We are human.

Q. That means you sometimes do, doesn't it?

A. I wouldn't say on a license. That is almost

(Testimony of Henry James Warren.)

our profession. That is something we hardly ever miss.

Q. What about the number of people?

A. Almost as accurate. [269]

Q. Do you ever make a mistake?

A. I don't think I have to answer that, do I?

Mr. Schnacke: We will stipulate that the witness is human.

Mr. Gladstein: Will you also stipulate——

The Court: Come on, get on with it.

Mr. Gladstein: ——that humans err?

The Witness: Stick to the record there.

Mr. Gladstein: Will Your Honor pardon me a moment?

Mr. Gladstein: Q. Now, on the 20th of August, sir, how many inspectors—. Is that your title, Inspector? A. Yes.

Q. How many inspectors other than yourself were on duty at that station?

A. Usually, two. Sometimes three to a shift, and we work around the clock.

Q. Can you tell us, if you remember, how many of you were on duty between 3:30 p.m. and 4:20 p.m. that day? A. Yes, sir.

Q. How many?

A. Two, sir. Possibly three. I work an overlapping period in there sometimes during the heavy hours. But at the moment I would say there were just two on duty when that car went through.

Q. On this particular sheet that Mr. Schnacke asked you [270] about, is that sheet kept by one of

(Testimony of Henry James Warren.)

you or both of you, if there are three on duty, do all three write on the same document? A. Yes, sir.

Q. You all do? A. Yes, sir.

Q. You have it located in some central place, is that right?

A. Yes. It is on a clip board that sets on the table and cars coming in stop beside the table.

Q. Is there a tabulation here of the number of cars that passed through that station that day?

A. Not on there, but we do it 50 cars to a page.

Q. I see. You count the number of pages and that would tell you, is that right? A. Yes, sir.

Q. Take a look at that and see. Am I correct in saying that the last page is numbered 17, and it seems to be full, so you would take 17 times 50 cars?

A. Yes. There is another page with five. Seventeen full pages and five additional.

Q. The total number of cars that day would be 17 times 50 plus five? A. Yes, sir.

Q. Just another question, sir: That station that you were at is located on what highway? [271]

A. 97, sir.

Q. Is that a national highway?

A. California. Ties into the national highway.

Q. Well, I am just trying, if you will help me—I don't know the exact terms. Is it an important highway, one of the main highways?

A. Yes, sir.

Mr. Gladstein: That is all.

(Testimony of Henry James Warren.)

Redirect Examination

Mr. Schnacke: Q. What are the principal cities to the north and south of Dorris on that highway?

A. Directly above the station going north is Klamath Falls, Oregon, which eventually leads on—you can go into Washington, Oregon, or branch off to Montana and Idaho.

Q. And to the south?

A. Leads back into Weed to Highway 99 and then becomes Highway 99.

Q. So Dorris is between Klamath Falls and Weed, generally? A. Yes, sir.

Mr. Schnacke: That is all.

(Witness excused.)

Mr. Schnacke: Mr. Smith. [272]

FRANK J. SMITH

was called as a witness on behalf of the Government, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Q. Please state your name to the Court and to the Jury?

A. Frank J. Smith.

Direct Examination

Mr. Schnacke: Q. Mr. Smith, what is your occupation?

A. I am a special agent for the Federal Bureau of Investigation.

Q. And to what office are you assigned?

(Testimony of Frank J. Smith.)

A. The New York Office.

Q. How long have you been assigned to the New York Office? A. Eight years.

Q. And how long have you been a member of the FBI? A. Thirteen years.

Q. And on August 27 of last year were you in the vicinity of Twain Harte, California?

A. Yes, sir, I was.

Q. Did you participate in the arrests that were made at the cabin on that date?

A. Yes, I did.

Q. Are you acquainted with a Robert G. Thompson? [273] A. Yes, I am.

Q. For how long have you known him?

A. Oh, I have known Robert Thompson from about 1949 to this date—to the present.

Q. I will show you Government's Exhibit 2 and ask you if that picture represents Robert Thompson as you have seen him on any occasion?

A. Yes, this is the way Thompson appeared on August 27, 1953, at the time I arrested him.

Q. Is that the way he appeared in 1949 when you saw him? A. No, not at all.

Q. How did he look in 1949?

A. Well, he had dark brown hair and he had his hair—wore his hair much longer. He had a crew cut in this picture there at the time we arrested him. His hair was dyed red. He had a mustache, had a reddish mustache, and his eyebrows were red. His complexion was a brown. When I knew him in the past he had an apparently sallow complexion.

(Testimony of Frank J. Smith.)

He wasn't the color he was at the time we saw him.

He weighed about 41 pounds heavier on August 27, 1953, than he had when I saw him prior to that, which was about May 1st, 1951. He had a definite stomach, quite a large stomach, which he didn't have before. He was a husky built fellow, but he was quite fat in this picture here.

Q. Now, you say the last time you saw him prior to August [274] 27, 1953, was in May 1951, is that right? A. That is right, May of 1951.

Q. Between May of 1951 and the time you first saw Robert Thompson, on how many occasions did you see him?

A. Oh, I must have seen Thompson several hundred times.

Q. Was that in connection with your employment?

A. Yes, that is right. I saw him at the Communist Party headquarters, and about the time of the trial in New York.

Q. You were in attendance at that trial and observed him there? A. Yes, I did.

Q. What time did you arrive at the Twain Harte cabin on August 27, 1953? A. At 1:05 p.m.

Q. You arrived with the arresting party?

A. Yes, that is right.

Q. After your arrival, will you tell us what you did with respect to Robert Thompson or any of the defendants?

A. Well, after my arrival there, the agent in charge had announced that the fugitives were under

(Testimony of Frank J. Smith.)

arrest. The others were charged with harboring. I was directed——

Mr. Gladstein: (interposing) I object to that and ask the witness give his testimony, not in a conclusionary form, but in terms of what he said and heard and observed.

Mr. Schnacke: Q. Did you hear the agent in charge give [275] that announcement?

A. Yes, I did.

Q. What happened after that?

Mr. Gladstein: Just a moment. That is ambiguous. Make what statement? There were two statements the witness mentioned, if Your Honor please.

The Court: Well——

The Witness: A. I heard the agent in charge announce that the two fugitives were under arrest and that the others—and the fact that the other persons in the cabin were being charged with harboring the fugitives. [276]

Q. What did you observe or do thereafter?

A. I went to Thompson and asked him who he was, and he wouldn't talk to me. He wouldn't say anything. I knew Thompson and he knew me.

Mr. Gladstein: I am going to object to any conversations between this witness and Thompson. It is hearsay, no proper foundation laid, and it will be incompetent, irrelevant and immaterial.

The Court: The last answer may go out as the opinion and conclusion of the witness.

Mr. Schnacke: If Your Honor please, the first

(Testimony of Frank J. Smith.)

part of the last answer, the question made and the refusal to answer by Thompson may stay in?

The Court: I did not mean that part. The part of the answer in which he said Thompson knew him calls for a conclusion.

Mr. Schnacke: Q. What did you do thereafter?

A. I remained with Thompson. He was fingerprinted. At the time he was printed I was there with him. He denied his identity at that time. He still would not talk about who he was.

Mr. Gladstein: I am going to object to that and move that it be stricken unless the proper foundation is laid.

The Court: Have him state who was present and what the conversation was. [277]

Mr. Schnacke: Q. Who was present at the time he was being fingerprinted?

A. Roy Erickson, Agent Roy Erickson was there and I was there. They were the two ones that I recall immediately.

Q. Were there other agents present?

A. There were other agents there, yes.

Q. Where was this in the area?

A. Right immediately in front of the cabin.

Q. In the yard in front of the cabin?

A. In the yard, yes, in front of the cabin.

Q. Who spoke to Thompson and what if anything did Thompson say in reply at that time?

A. I spoke to Thompson—do you mean in connection with——

Q. At the time of the fingerprinting.

(Testimony of Frank J. Smith.)

A. Well, I spoke to him for one and asked him if he would sign the card, and he would not sign the card.

Q. Did he say something in response to your statement to him or to your request of him?

A. He either shook his head or indicated in the negative he would not sign it.

Q. Did he speak at all during the time that you were with him?

A. Not at the time at the cabin. On our trip back to San Francisco I talked to him.

Q. It was not until the trip back to San Francisco that you [278] heard him say anything?

A. Anything intelligent. He would shrug his shoulders. He would indicate he did not want to talk.

Q. After the fingerprinting what occurred between yourself and Mr. Thompson?

Mr. Gladstein: If Your Honor please, this is objectionable. It is not competent, relevant or material concerning these defendants.

The Court: You are referring now to what place? At the cabin?

Mr. Schnacke: Yes, Your Honor, at the cabin, immediately after the fingerprinting. I was asking him for the next actions that took place.

The Court: I will overrule the objection.

The Witness: A. After Thompson was fingerprinted he was photographed, and thereafter we prepared to go back to San Francisco. At the time of the arrest Thompson was dressed in a pair of

(Testimony of Frank J. Smith.)

Khaki pants. He had no shirt on, and he asked if he could have something to put on when it was apparent that he was going to be brought back to San Francisco. So I asked him where his clothes were, and one of the other agents,—Thompson told the agent that his clothes were up in the bedroom in the cabin, and one of the other agents, Agent McCann, went up to the room and brought down the suit Thompson had described. The first suit that he brought down Thompson said was not his. [279] However, a gray sport shirt that he had, Thompson admitted was his and he put the sport shirt on. The agent went back to the room and brought down a second suit, a cord suit, which Thompson admitted was his suit. He didn't put the suit on at the time, however. He carried it with him, went out, and got in the Bureau cars and came back to San Francisco.

Mr. Schnacke: Q. Did you examine that suit?

A. Yes, I did.

Q. Did you find anything in that suit?

Mr. Gladstein: May we have the time and place established of the examination and the persons present?

Mr. Schnacke: Q. Where was it that you examined this, Mr. Smith?

A. The suit was examined right at the cabin as he brought it down.

Q. Was that outside the cabin?

A. No, inside the cabin before I came out with him. Immediately when the suit was brought down it was examined to see if anything was in the suit.

(Testimony of Frank J. Smith.)

Q. I will show you a document and ask you if you have ever seen that before, and if so when and where?

A. Yes, I have. I first saw this document on August 27th and it was a certification of birth. It was in Thompson's coat. It was in the coat I just described, in the suit that we brought downstairs that he said was his. [280]

Mr. Schnacke: I will offer that document in evidence as Government's exhibit next in order.

Mr. Gladstein: If Your Honor please, I object to this upon the ground it is not binding upon any of these defendants. There is no proper foundation laid for introducing it against these defendants.

The Court: If it relates to the identity of the person named in the indictment——

Mr. Gladstein: Not as defendant.

Mr. Schnacke: A co-conspirator, Your Honor.

Mr. Gladstein: Maybe so.

Mr. Schnacke: There is ample evidence as of this time to justify the admission of this document in the opinion of the Government.

Mr. Gladstein: I trust my objection. I do not think the proper foundation has been laid to show any connection with these defendants.

The Court: Overruled. It may be admitted.

(Whereupon the document referred to above was thereupon received in evidence and marked Government's Exhibit 93.)

Mr. Schnacke: If Your Honor please, on Government's Exhibit 93 there is a stamp on the reverse

(Testimony of Frank J. Smith.)

indicating the circumstances under which this document has previously been used, and it is clear that that stamp was not on the document at the time it was obtained by Agent Smith. It is a court stamp.

The Court: Very well. It is not a part of the exhibit.

Mr. Schnacke: It is not part of the exhibit.

Mr. Schnacke: Q. Mr. Smith, I will show you a booklet and ask you if you have ever seen that booklet before and if so when and where?

A. Yes, I have seen this booklet on August 27th, 1953, at the cabin at Twain Harte.

Q. Where?

A. It was in the pocket of Thompson's suit, the suit that he identified as his.

Q. Was that in the same pocket as the document you described as Exhibit 93? A. Yes, it was.

Mr. Schnacke: I will offer that book in evidence as Government's Exhibit next in order.

Mr. Gladstein: Same objection, Your Honor.

The Court: Overruled. It may be admitted.

(Whereupon the booklet referred to was thereupon received in evidence and marked Government's Exhibit 94.)

Mr. Schnacke: If Your Honor please, I would like to identify these documents to the jury, if I may. Government's Exhibit No. 93, a document that says "Department of Health, [282] Bureau of Records and Statistics, City of New York, Certification of Birth. This is to certify that John Francis Brennan, sex male, was born in the City of New

(Testimony of Frank J. Smith.)

York on April 9th, 1909, according to birth record No. 19453, filed in the Manhattan office of this Bureau on April 21, 1909. In witness whereof, and so forth," and the signature of the registrar and the deputy. Apparently they are appended signatures.

And the text on the reverse recites certain provisions of the administrative code of the City of New York. The matter appearing in the upper right-hand corner of the reverse side was not part of the document at the time it was obtained by this witness.

Government's Exhibit 94 is a book. It contains a stamp, initiation stamp, \$100, with a rubber stamp marked over it, "September 1, 1951." It reads, "This is to certify in consideration of initiation fee of \$100, duly paid, Local Union No. 697, John F. Brennan, journeyman and worker, No. 470133, is hereby granted membership in the International Association of Bridge, Structural and Ornamental Iron Workers, affiliated with the American Federation of Labor, by Local Union 697 of Roanoke, Virginia. September 1, 1951."

And there are signatures purporting to be the signatures of the president, financial secretary and the address of the secretary. It bears the initials of Mr. Smith in the lower left-hand corner. [283]

Inside are several pages with columns marked for monthly dues, assessments. Under monthly dues it says, "You must have stamp before end of month to receive death benefits." In the last column, "See that you get stamps every time you pay dues and as-

(Testimony of Frank J. Smith.)

sessments. Don't pay unless secretary attaches stamps paid for."

Starting in the middle of the second page there are stamps, monthly dues stamps, which are in green, and death benefit stamps, which are in pink. Those stamps are over-stamped with a rubber stamp. The first two September 10th, 1951, the second stamp is September 10th, 1951, the green stamp. I can read 10/51 on the red stamp there but I can't read the month preceding it.

And then October 10th, 1951, on the next row of stamps, October 10th, 1951 on the next row of stamps, October 1951 on all of the stamps in the first five rows on the second page containing stamps.

May 30th, 1952, and also the date and number is stamped on the bottom row there. Then we find May 31st, 1952 stamps on the top half of the following page. October 24th, 1952 stamps on the bottom stamps on that page.

On the next page we have December 26 stamps imprinted over each of the stamps and on the page following that, containing just four stamps, a December 26th, 1952 stamp.

The balance of the book contains printed matter except [284] for the last page: Date of first initiation, a rubber stamp, September 1, 1951 in local Union No. 697.

Mr. Schnacke: Q. After the conversation about the coat to which you testified, did you conduct any further search of the person of Mr. Thompson or of the cabin at Twain Harte?

(Testimony of Frank J. Smith.)

A. I conducted no search of the cabin at Twain Harte, but I did conduct the search of Thompson's person. I naturally checked him at the time of the arrest, and he had a wallet in his back pocket, in the khaki pants he was wearing, a pen knife, car keys, handkerchief, and that was all he had.

Q. Did you examine the contents of the wallet?

A. Yes, sir, I did.

Q. I will show you a wallet and ask you if you have ever seen that wallet before, and if so when and where?

A. Yes, this is the wallet that I took from Thompson's back pocket.

Q. How do you identify that?

A. At the time I put by initials and date on it. I put it in the corner here (indicating).

Q. I will show you two keys. Can you identify those keys?

A. Yes, these are the keys that I took from Thompson's pocket. There again I put the date and my initials on the keys.

Q. Those keys were found in his pocket?

A. Yes, sir, that is right.

Q. Pants or coat pocket?

A. Pants pocket. [285]

Q. And the pants he was wearing at the time you arrested him?

A. Yes, that is right.

Mr. Schnacke: I will ask that the wallet described by the witness be received in evidence as Government's Exhibit next in order.

(Testimony of Frank J. Smith.)

Mr. Gladstein: Same objection, if Your Honor please.

The Court: Same ruling.

(The wallet referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 95.)

Mr. Schnacke: I will ask that the keys described by the witness be marked for identification at this time.

(The keys referred to above were thereupon marked Government's Exhibit No. 96 for identification only.)

Mr. Schnacke: Q. I will show you certain documents and ask you if you have seen those documents before, and if so when and where?

A. Yes, I have seen these documents before. These are documents that were in the wallet that I took from Thompson's pocket.

Q. They were not enclosed in those cellophane containers, were they?

A. No, they were not.

Mr. Schnacke: I will remove them from these. I will ask the documents described by the witness be received in evidence [286] as Government's exhibit next in order.

Mr. Gladstein: I make the same objection that the search was not authorized, no connection so far as the defendants were concerned, no foundation, incompetent, irrelevant and immaterial.

Mr. Schnacke: We will mark these as a single exhibit in the envelope.

(Testimony of Frank J. Smith.)

The Court: Admitted.

(Whereupon the documents referred to were thereupon received in evidence and marked Government's Exhibit No. 97.)

Mr. Schnacke: Q. Mr. Smith, did you find certain other matter in the wallet of Robert Thompson that we have not introduced in evidence here?

A. Yes, I did. There was a matter of \$363, I believe, and some odd cents in the wallet.

Mr. Schnacke: May I describe to the jury generally, the nature of the matter in Government's Exhibit No. 97?

"Rent received, D. and L. Brennan, Apartment 2S6915 Cornell Avenue, Leslie M. Price, Stoney Avenue address, phone DOrchester 3-8000." In the lower right-hand corner it reads, "Chicago, December 6, 1952."

There are three long papers reading at the lower left-hand corner, "American Bridge, Pittsburgh, Pa.," showing hours and earnings, deductions, employee's name, Brennan, John F., [287] the amounts of earnings and hours shown thereafter. There are three of those, each of them bearing the name John F. Brennan.

There is a card of Robbins Export Co., Inc., and written on it it says, "Give bearer whatever part he wants C.O.D." The signature, "Max."

On the reverse it says, "From authority directing 9:00 to 6:00 p.m.—" It looks like "Vet 17," and what appears to be a "D" or an "O," followed by a capital "S" and a small "t," and Mr. Smith's initials.

(Testimony of Frank J. Smith.)

A 1953 membership card of L. Brennan in the America National Red Cross, a contribution \$1.00.

A paper name John Brennan, city or town, Chicago, street address, Cook County. The description at the bottom—across the top April 24th, 1952, what appears to be the small letters K.C., the number 47566, and the number X2518917, a dollar sign, the number 1.00 followed by D.A.

And then "Associated Hospital Service, New York's Blue Cross Plan. John Brennan, 149 Vermilyea Avenue, New York City."

An employee courtesy card, Schenley Distillers Corporation. Introducing John Brennan. Firm, W. C. Williams Kirby, address 224 W. 49th Street, bearing apparently the signatures of V. V. King and the name of Mr. Shindler written in the lower left-hand corner.

The Social Security card 09-207-6833 for John Francis Brennan, containing what appears to be a signature, John Francis [288] Brennan.

The Social Security card, Linda Corsia Brennan, and bearing the apparent signature of Linda Corsia Brennan.

An official receipt, International receipt of Bridge, Structural and Ornamental Iron Workers, Local No. 697, September 26th, 1952, received of J. Brennan one—fifty written out, dollars for credit toward September dues. Received by, and a signature.

A social security account, John Francis Brennan, Apartment 41, 149 Vermilyea Avenue, New York, New York, 09-207-6833.

(Testimony of Frank J. Smith.)

A Missouri resident's fishing permit, name J. F. Brennan, address 5307 Pershing, St. Louis, age 44, blond hair, hazel eyes, height 5-11, date issued May 31, 1953, bearing the apparent signature of J. F. Brennan, the apparent signature of E. J. Chambers.

Then a card, a photostatic copy of a document, the top line April 24th, 1952, and a series of other numbers, what appears to be one dollar, and under that, name, John F. Brennan, a code number, 13655, Street, 6915 Cornell, Chicago 49, Cook County. A description, signature John Brennan, the bottom line, then driver's license will expire April 30th, 1955, State of Illinois, Edward J. Barrett, Secretary of State.

Operator's license, 1951, Pennsylvania Department of Revenue, made out to John F. Brennan, Majestic Hotel, Broad Street and Girerd Avenue, Philadelphia, Pennsylvania. [289]

And the Jackson Park Currency Exchange, Incorporated, money order receipt in the amount of \$30, dated May 27th, 1952.

Mr. Schnacke: Q. Mr. Smith, did you find on Mr. Thompson's person or in his wallet any material in the name of Robert G. Thompson?

A. No, I did not. There was nothing in his wallet or on his person with the name Robert G. Thompson at all.

Q. Did you have a conversation with Mr. Thompson about his wallet at a later time?

A. Yes, I did.

Q. When and where was that?

(Testimony of Frank J. Smith.)

A. When we were back in the San Francisco office.

Q. Who was present at that time?

A. Special Agent Richardson, Thompson and myself.

Q. What was the nature of that conversation?

Mr. Gladstein: I object to that as hearsay, not binding on any of the defendants, incompetent, irrelevant and immaterial.

The Court: There is one conspiracy charge in which he is named as a co-conspirator.

Mr. Schnacke: Yes, Your Honor.

The Court: The circumstances may permit it. It depends upon the state of the record at the time. I will overrule the objection. If it appears that the Court has committed some grievous error in that, it can later be stricken.

The Witness: What was your question? [290]

(Record read.)

The Witness: A. I attempted——

The Court: Don't say what you attempted to do. Just say what was said.

The Witness: A. I asked Thompson about where he had been and if he knew where the other Communist fugitives were at the present time.

Mr. Gladstein: I am going to move to strike that and renew my objection, if Your Honor please.

The Court: I will deny the motion.

The Witness: A. Thompson would not answer me, but I then went to him—took the wallet out in front of them and started to go through the various

(Testimony of Frank J. Smith.)

material that was in the wallet, and in his presence asked him if it was his, and he said it was his wallet, and these were his papers that were in the wallet. I went over each item in the wallet with him, and I made specific mention of the fact that everything was in the name of John Francis Brennan, and I recall I did ask him who John Francis Brennan was, and he smiled at me and made no comment. He wouldn't tell me who he was. I made a listing of the documents——

The Court: He is going beyond the question.

Mr. Schnacke: Q. That was the end of the conversation? A. Right.

Q. Did you prepare a receipt or a listing of the documents [291] in the wallet?

A. Yes, I did. I prepared—I made a listing of the documents as I reviewed them with him. He would not sign a receipt for those. He made no comment about it. But I also prepared a listing of the money that I took from the wallet, and at first I showed it to him and he agreed it was correct, and at first he wouldn't sign this either. However, just prior to the time that he was taken, to be brought to jail, he said, "Well, I guess you know who I am," and he said, "I will sign it." So in my presence he signed his name, Robert Thompson, and the listing of the money I had taken from him and the wallet and the penknife.

Q. Is this the listing to which you have referred? A. Yes, sir, it is.

(Testimony of Frank J. Smith.)

Q. Does the signature of Robert Thompson appear on that?

A. Yes, it does. It appears directly above mine.

Q. There is some rubber stamp matter in the upper right-hand corner that was not on the document at the time you received it from Mr. Thompson?

A. No, sir.

Mr. Schnacke: I will ask that that document be received in evidence as Government's exhibit next in order.

Mr. Gladstein: I object to it as hearsay, incompetent, irrelevant and immaterial, and not binding on any of the defendants, no connection shown, no proper foundation. [292]

The Court: In my opinion the record is in sufficient shape to warrant the introduction of this document at this time as to its admissibility. It may be admitted.

(Whereupon the document referred to was thereupon received in evidence and marked Government's Exhibit No. 98.)

Mr. Schnacke: No further questions, Mr. Smith.

Mr. Gladstein: Does Your Honor want to take the morning recess before I proceed?

The Court: We will take our usual mid-morning recess at this time.

(Recess.) [293]

Cross Examination

Mr. Gladstein: Q: Mr. Smith, what time did

(Testimony of Frank J. Smith.)

you say you went to the house there at Twain Harte? A. 1:05 p.m.

Q. Did you come from San Francisco?

A. Yes, sir, that's right.

Q. When did you leave San Francisco?

A. On September 26th. Pardon me, August 26th.

Q. At what time?

A. I believe it was around four o'clock in the afternoon.

Q. And you went toward Twain Harte?

A. Pardon?

Q. And went up toward Twain Harte?

A. Yes, that is right.

Q. When did you arrive at Twain Harte?

A. I believe it was around 9:30.

Q. At night? A. Yes.

Q. Did you go to the house at all before 1:05 next day? A. No, sir, I didn't.

Q. Were you alone or with others?

A. Pardon?

Q. Were you alone or with others?

A. I was with various other agents.

Q. Was Mr. McCann with you at any time?

A. Yes, sir, he was.

Q. During what period was he with you?

A. You mean immediately prior——

Q. To the arrest.

A. ——to the arrest?

Q. That day or next day.

A. Agent McCann was with me on the 26th, and

(Testimony of Frank J. Smith.)

immediately prior to the arrest on the 27th—or at the time of the arrest, I should say, on the 27th.

Q. That is James McCann?

A. No, Joseph. Joseph Patrick.

Q. There are two McCanns who were there?

A. No. The McCann I was speaking of is Joseph McCann.

Q. Is that the—I may have the first name wrong. Is that Joseph McCann that testified here? I was wrong. I am told his first name is Joseph and he has already testified in this case. You might not know that.

A. Yes.

Q. Was Mr. McCann with you during the early morning hours of the 27th, say, any time between daybreak and one o'clock in the afternoon?

A. Not in the early morning hours. He was with me at the time of the arrests at 1:05.

Q. Did you have the house under surveillance at any point before 1:05? [295]

A. I did not.

Q. Or the occupants of the house?

A. I did not.

Q. When you talked with Thompson, did you have a warrant for his arrest?

A. I did not have a warrant with me at the time. I advised him there was a warrant——

Q. No—— A. ——outstanding.

Q. I just asked if you had one. You didn't have one? A. I did not have it with me.

Q. Did you ever have a warrant for his arrest?

(Testimony of Frank J. Smith.)

A. There is a warrant outstanding for Thompson.

Q. No, I asked you if you ever had a warrant for his arrest.

The Court: He means you personally, in your possession.

A. I personally did not have it in my possession.

Mr. Gladstein: Q. Did you ever have it in your possession? A. No, sir.

Q. What?

A. I never had it in my possession, no.

Q. When did you leave New York to come here to Twain Harte?

Mr. Schnacke: Oh, if Your Honor please, I think that is going back much too far. I object to that as being immaterial and not within the scope of the direct examination.

Mr. Gladstein: I think it is within the proper scope of [296] cross examination. How far back it goes I can't know.

The Court: Well, that is a little too far back. Anything that reasonably bears on the factual matters that the witness has testified to is within the bounds of cross examination, but when the man left New York—oh, it might be possible the Court might allow it in its discretion if it appeared there was some question whether the man was ever here, or something of that kind, the testimony whether he left New York——

Mr. Gladstein: That is the purpose.

(Testimony of Frank J. Smith.)

The Court: But I think it is too far afield. Sustain the objection.

Q. Mr. Gladstein: Is it a fact you came from New York for the purpose of participating in the arrest of Thompson?

Mr. Schnacke: I object to that as being immaterial. The state of mind of the witness, his purpose in coming to Twain Harte, isn't material.

Mr. Gladstein: It isn't a question of the state of mind. Question of his instructions, not state of mind. What he was coming here to do.

The Court: I don't think it makes any difference what his purpose was.

Mr. Gladstein: Q. At the time you were at Twain Harte on the 27th of August, although you were there and had come from San Francisco the day before, you were still attached to the New York office of the Bureau, is that correct? [297]

A. Yes, sir, that is right.

Q. Did you personally have any difficulty in recognizing Thompson when you saw him?

A. I beg your pardon?

Q. Did you personally have any difficulty in recognizing Thompson when you saw him?

A. I personally did not because I had seen him on several hundred occasions, but his changed identity was very noticeable. As I say, I personally did not, although there was quite a change. If I hadn't seen him on so many occasions I probably would not have identified him.

(Testimony of Frank J. Smith.)

Mr. Gladstein: That is all. Oh, just a moment.

The Court: Anything else?

Mr. Schnacke: Is that all, Mr. Gladstein?

Mr. Gladstein: Just a second. I am constrained to ask Your Honor's indulgence to ask another question.

Q. Will you tell us when you received instructions to participate in the arrest of Thompson?

Mr. Schnacke: I object to that as being immaterial.

The Court: I will sustain the objection.

Mr. Gladstein: That is all.

Mr. Schnacke: Thank you, Mr. Smith. That is all.

(Witness excused.)

Mr. Schnacke: Mr. Ground. [298]

ALBERT B. GROUND

called as a witness on behalf of the Government, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Please state your name for the Court and jury.

A. Albert B. Ground—G-r-o-u-n-d.

Direct Examination

Mr. Schnacke: Q. Where do you reside, Mr. Ground?

A. 7411 Maple Avenue, Takoma Park, Maryland, a suburb of Washington, D. C.

(Testimony of Albert B. Ground.)

Q. By whom are you employed?

A. Federal Bureau of Investigation.

Q. What is the nature of your employment?

A. I am a fingerprint examiner. I classify, file, search and identify finger prints.

Q. For how long have you been so employed?

A. Thirty years.

Q. How many years? A. Thirty.

Q. Thirty? During the course of that time approximately how many fingerprints have you examined and classified?

A. Approximately 5,000,000.

Q. How many fingerprints are there in the files of the Federal Bureau of Investigation with which you work? A. Over 130,000,000. [299]

Q. And you have worked with fingerprints during the entire 30 years to which you have referred, is that right? A. Yes, sir.

Q. What is an inked fingerprint?

A. Inked fingerprint is the recording of the ridge formation of the bulb of the finger.

Q. And what is a latent fingerprint?

A. A latent fingerprint is one that is left at the scene of a crime, usually not discernible to the naked eye.

Mr. Gladstein: I am going to ask that that be stricken on the ground a portion of it is the conclusion and opinion of the witness.

The Court: Well——

Mr. Gladstein: Not a proper definition of a latent fingerprint.

(Testimony of Albert B. Ground.)

The Court: "At the scene of the crime", that may go out. I take it you mean a print left any place where a finger meets an object?

A. Yes, sir. The ridge formation leaves perspiration any place you touch. I have left my impressions on the microphone.

Mr. Schnacke: Q. Mr. Ground, I will show you Government's Exhibit No. 78 and ask you if you have ever seen that before? A. I have.

Q. And I will show you Government's Exhibit 92, which is ten Budweiser beer cans and ask if you have ever seen those [300] before?

A. I have.

Q. Are there inked fingerprints on Government's Exhibit 84?

A. That is this (indicating)?

Q. Yes. A. Yes, sir.

Q. And did you examine the beer cans in Government's Exhibit 92 to determine if there were latent fingerprints on that? A. I did.

Q. And did you find latent fingerprints on each of those cans?

Mr. Gladstein: Excuse me, I didn't hear the question.

The Court: "Did you find latent fingerprints on each of those cans?"

The Witness: I did.

Mr. Schnacke: Q. And did you compare the latent fingerprints found on the beer cans with the inked fingerprints found on the card, Government's Exhibit 84?

(Testimony of Albert B. Ground.)

Mr. Gladstein: One moment, sir. Objected to on the ground no proper foundation has been laid. We haven't had the witness tell us when and where and the circumstances under which this examination was made.

Mr. Schnacke: I asked if comparisons were made, and I will proceed after that to develop when and where they were made. Wouldn't that be the proper order?

The Witness: A. I did. [301]

Mr. Schnacke: Q. Where did you make that examination?

A. In my office at the Federal Bureau of Investigation, Washington, D. C.

Q. And do you recall when that was?

A. I received the cans on September 21st, 1953, and they were made within the following several days.

Q. You don't recall the exact date on which you made that comparison? A. No, sir.

Q. But it was some time within a period of a few days? A. Four or five days.

Q. Now, in making the comparison of the inked fingerprints and the latent fingerprints to which you have referred, what did you do?

A. I compared them—first, I photographed the latent impressions on the cans and from the photographs made my comparison with the inked fingerprints on the fingerprint card by using the fingerprint glass and comparing each fingerprint on the card with the latent impression on the can.

(Testimony of Albert B. Ground.)

Q. Did you find a fingerprint on any of the beer cans in Government's Exhibit 92 that corresponded to any of the fingerprints on the card, Government's Exhibit 84?

Mr. Schnacke: I beg your pardon, do I have the wrong exhibit number?

The Court: You are using the wrong one. You said 78 at [302] first.

Mr. Schnacke: It is Government's Exhibit No. 78.

The Witness: 78?

Mr. Schnacke: May the record show where I have previously spoken of Exhibit No. 84, which I think I have, I intended to say Exhibit 78.

The Court: Refer to it by name, too, and then there won't be any confusion.

Mr. Schnacke: Q. It is the fingerprint card of Shirley Kremen.

The Witness: A. That is correct. One latent fingerprint on can No. 4 was identified with the right thumb impression of Shirley Kremen. And one other latent impression on can No. 4 was identified as the left thumb print of Shirley Kremen.

One latent fingerprint on can No. 5 was identified as the right thumb impression of Shirley Kremen.

One latent fingerprint on can No. 6 was identified as the left thumb impression of Shirley Kremen.

Those are all that were identified as the fingerprints of Shirley Kremen.

Q. Would you hand me the cans on which you

(Testimony of Albert B. Ground.)

found fingerprints identical with the prints on the fingerprint card of Shirley Kremen?

Mr. Gladstein: I think that last question is assuming something not in evidence. The witness said he "identified". [303] Counsel said something about "identical".

Mr. Schnacke: I will withdraw that and use the phrase, that corresponded to the fingerprints of Shirley Kremen as they appeared on her card.

Mr. Gladstein: I think it would be better if Mr. Schnacke used the testimony rather than trying to change it.

The Witness: A. Here they are. This one, also.

Mr. Schnacke: Q. You have handed me three cans. Are those cans marked in any way so that you can identify them?

A. They have numbers on them, number 4, 5, and 6.

Q. And who put those numbers on there?

A. I put those numbers on there.

Q. That was after you received them in Washington, D. C.? A. Yes.

Q. The number to which you refer was put on the cellophane wrapping, is that correct?

A. That is correct, on the outside.

Q. Who wrapped those cans?

A. I did.

Q. When you received the cans, in what condition were they?

A. They didn't have the cellophane wrapping on the outside, I put the cellophane wrapping there.

(Testimony of Albert B. Ground.)

Q. Did they have the scotch tape?

A. Yes, the latent impressions were covered with scotch tape.

Mr. Gladstein: Well, I am going to object to that and move [304] that be stricken.

The Court: What?

Mr. Gladstein: About the latent impressions were covered by tape. He was asked whether the tape was present and he may say so.

The Court: Read the question and answer.

(Question and answer read by the reporter.)

The Court: I will deny the motion.

Mr. Schnacke: These cans are all in evidence, Your Honor, under one exhibit number, but I think with the marks on the can testified to by this witness it is unnecessary to designate them any further in the record other than to refer to the numbers that appear on the cellophane wrappers.

Mr. Schnacke: Q. Mr. Ground, have you ever seen fingerprints made by different people that were the same? A. No, sir.

Q. That is, in the examination of all the fingerprints you testified you have looked at in your career?

A. Not unless they were made by the same finger.

Q. And did you arrive at a conclusion as to the latent prints that you saw on these cans that are numbered 4, 5 and 6, and the prints that you observed on Shirley Kremen's fingerprint card?

A. Yes, sir. As I testified——

(Testimony of Albert B. Ground.)

Q. What was that conclusion? [305]

A. One fingerprint on can No. 4 was identified as the right thumb print. One other fingerprint on can No. 4 was identified as the left thumb print.

Q. By "identified" do you mean was identical with those prints as they appear on the fingerprint card?

A. Impressions, the impression on the cans and the impression on the fingerprint card.

One latent fingerprint on can No. 5 was identified as the right thumb print of Shirley Kremen.

One fingerprint on can No. 6 was identified as the right thumb print of Shirley Kremen. I beg your pardon, it is the left thumb print. The last one is the left thumb print.

Q. Mr. Ground, I will show you Government's Exhibit 81, which is the fingerprint card of Robert Thompson, and ask you if you made a comparison between the fingerprints appearing on that card and the latent fingerprints on any of the beer cans?

A. I did.

Q. And what did that comparison disclose to you?

A. One of the impressions appearing on can No. 5 was identified as the right ring fingerprint of Robert Thompson.

One fingerprint on can No. 6 was identified as the left ring fingerprint of Robert Thompson.

One latent fingerprint on can No. 10 was identified as the left little fingerprint of Robert Thompson.

(Testimony of Albert B. Ground.)

And three latent fingerprints on can No. 12 was identified, [306] one with the right middle, one with the right ring, and one with the left middle finger impression of Robert Thompson.

Mr. Gladstein: May I have that answer again?

Mr. Schnacke: Would you read it back?

(Answer read by the reporter.)

Mr. Schnacke: Q. When you say "was identified with", do you mean was identical to?

A. They were made by the same finger. The same finger made the impression on the fingerprint card as made the impression on the beer can.

Q. Did you find any other comparisons, or is that all of them with respect to Robert Thompson?

A. That is all with respect to Robert Thompson.

Q. I show you Government's Exhibit 84, the fingerprint card of Sidney Steinberg, and ask you if you made the same comparison of fingerprints on that card? A. I did.

Q. With the beer cans? A. I did.

Q. And what was the result of that comparison?

A. One latent fingerprint on can No. 8 was identified as the right index finger impression of Sidney Steinberg.

Two latent fingerprints on can No. 9 were identified as the finger impressions of Sidney Steinberg, one the right index, one the right middle finger impression. [307]

Q. And when you say "was identified with", that has the same meaning as the phrase had as you used it heretofore?

(Testimony of Albert B. Ground.)

A. That is correct. The same fingers made both impressions.

Q. Now, I will show you Government's Exhibit 80, the fingerprint card of Samuel Irving Coleman, and ask you if you made the same type of comparison with respect to the prints on that card?

A. I did.

Q. And what did that comparison disclose?

A. One latent finger impression on—I beg your pardon. Two latent finger impressions on can No. 3 were identified as the left thumb print of Samuel Coleman.

Q. And I will show you Government's Exhibit 79, the fingerprint card of Carl Ross, and ask you if you made the same type of comparison with respect to this one? A. I did.

Q. And what did that comparison disclose?

A. One latent fingerprint on can No. 11 was identified as the right middle fingerprint of Carl Ross.

One latent fingerprint on Budweiser can No. 8 was identified as the right index fingerprint of Carl Ross.

One additional latent impression on can No. 8 was identified as the right middle finger impression of Carl Ross.

Q. And I will show you Government's Exhibit 85, being the fingerprint card of the defendant Patricia Blau, and ask you if [308] you made the same comparison with respect to the fingerprints on that card? A. I did.

(Testimony of Albert B. Ground.)

Q. What did that comparison disclose?

A. One latent fingerprint on Budweiser can No. 7 was identified as the right index fingerprint of Patricia Blau.

Mr. Gladstein: Right what?

A. Index finger.

Mr. Schnacke: Q. And in each case where you said "were identified with", you mean that the same finger that made the impression on the card is the finger that made the impression on the beer can, is that correct? A. Yes, sir.

Q. Now, Mr. Ground, are you prepared to demonstrate how you made the comparison of the fingerprints on the *cans* and the fingerprints on the cans? A. Yes, sir.

Q. Did you photograph the fingerprints on the can? A. I did.

Q. And did you photograph the fingerprints on the card? A. I did.

Q. And did you put those photographs together in some fashion so that they could be compared, one with the other?

A. I made a chart, enlargement of one of each of those identifications, to illustrate the manner in which we arrived [309] at a conclusion as to the identity of those impressions.

Mr. Schnacke: With the permission of the Court, may the witness explain to the jury how he made one comparison for each of the defendants in this case?

(Testimony of Albert B. Ground.)

(Thereupon the witness left the stand and took a position before the jury box.)

The Witness: A. (Displaying exhibit to the jury). The finger impression on the left is the inked, or enlargement of the inked finger impression on the fingerprint card for Samuel Coleman.

The latent impression on the right is one of the finger impressions appearing on can No. 3. There is also a comparison set out here, and the points of similarity are described, a line drawn from each characteristics — ending ridges, bifurcations, short ridges, and islands or enclosures considered as means of identity or comparison between one impression and another.

The points of similarity, you will see, are in exactly the same place on the latent impression enlargement as on the inked enlargement. Same general area, same spot, and the same distance. Same number of ridges between each and every point of similarity.

Point No. 1 on chart C, which is the inked impression of the left thumb print of Samuel Coleman, shows an ending ridge ending up here in the northwest corner of the chart. Immediately next to that, one ridge intervening, is point 12—next to each other. I have shown the ridge of point 1 to the right, and [310] drop down three ridges, the ridge running to the left stops at that point.

Same thing on the other side on this chart. Point 1, ending ridge, goes over, point 12. Follow

(Testimony of Albert B. Ground.)

the ridge up this point 1, 2, 3 ridges down and find a point 1.

Immediately to the right of that, another ending ridge going to the left is point 3. Same thing occurs in both charts. Following down to the center of the chart, a ridge going to the left and stopping immediately above the center where you will find an ending ridge going left.

Same thing occurs in both charts. Just to the right a bifurcation going down. A bifurcation is a fork-like, like a fork in a road.

One ridge running down, opening into two ridges. That occurs at this point. Same thing, identical, occurs in the exact place on chart C.

To the right, one, two ridges over, is another ending ridge going upward. Just one ridge intervening. Downward from point 5, point 6, and across to point 7—one, two, three ridges intervening. That is a downward bifurcation.

And over to the left is a short ridge from the center of the pattern, coming down to the right, breaks down and drops at that point or stops. Same thing occurs in this chart. Comes down and stops.

Another two end ridges haven't been shown. They are [311] additional points of similarity that appear on each chart. To the left of the center and down in this manner, connecting at No. 9, which is an ending ridge, downward to the left of center in the pattern area.

Over to the left we find similar bifurcations or branches going downward to the left. It is point 10.

(Testimony of Albert B. Ground.)

Just above that there is another ridge over to the left, is point 11. Ending ridge going downward, appearing in exactly the same place on both charts.

I say in exactly the same place. There is an allowance must be made that that may be, oh, a quarter—one eighth or a quarter inch off, but in exactly the same spot. That is due to the photography and the curvature of the can. When you photograph around the edge of the can it brings it over over to the right, then when it is flattened out it is a little off to one side, maybe a quarter inch. However, the characteristics are exactly the same place and the same number of ridges between each and every characteristic. [312]

Mr. Schnacke: May the two photographs which the witness has referred to be marked Government's exhibit next in order?

Mr. Gladstein: Is that for identification?

Mr. Schnacke: In evidence.

Mr. Gladstein: I do not think the proper foundation has been laid for the reception in evidence. They were used for illustrative purposes. I think they should properly be identified. I want to object to their being received in evidence.

Mr. Schnacke: The fingerprints are in evidence and these are photographs of the fingerprints.

The Court: They are explanatory of the witness' testimony. They may be admitted.

(The photographs referred to were thereupon received in evidence and marked Plaintiff's Exhibit No. 99.)

(Testimony of Albert B. Ground.)

Mr. Schnacke: Q. You have handed me two more photographs. Will you tell me what these photographs represent?

A. Those are enlargements I believe of Sidney Steinberg's. It is marked on the outside.

Q. The photograph on the right is what?

A. On the right is the latent impression on can No. 9, one of the latent impressions on can No. 9.

Q. On the left is what?

A. On the left is the right index fingerprint of Sidney [313] Steinberg, an enlargement of the right index fingerprint of Sidney Steinberg, on the fingerprint card of Sidney Steinberg.

Mr. Schnacke: I will offer those two photographs in evidence as Government's Exhibit next in order.

The Court: Admitted.

Mr. Leonard: I make the same objection to this new offer as Mr. Gladstein made to the last one. I think it is preferable that the exhibit be in evidence prior to the time the witness explained it to the jury rather than putting it in afterwards.

The Court: Well, can't you shorten the testimony?

Mr. Schnacke: Suppose we put each of these in. We will allow the jury to look at them, and I will ask the witness to explain only one more of the photographs.

Mr. Gladstein: I am going to object to putting them in evidence. No proper foundation has been laid, and I will object to them severally and in

Testimony of Albert B. Ground.)

quantity, if, as I understand, they are going to be offered in quantity.

Moreover, if I may say so, if the Court please, this kind of testimony is opinion and conclusion testimony, and I want to make the objection that the witness has not been qualified by the testimony here today with a proper foundation to give his opinion and conclusion. If Your Honor overrules that objection I ask that the jury be instructed that this [314] is opinion testimony rather than fact testimony.

The Court: I do not know what distinction I can make to the jury in that regard. Probably 100 times I have heard fingerprint testimony presented in courts before a jury. I do not know how differently to do it. Of course it is opinion testimony. It is not necessary to put the detail in. The witness has given his opinion and explained how he did it. You seem to want to put the details in. It is always open for cross examination, of course.

Mark all of them for identification so you will have them in, and then you may proceed to ask what further questions you wish.

(The photographs referred to were thereupon marked Government's Exhibit No. 100 for identification.)

Mr. Schnacke: Q. What are the next photographs you are handing me, sir?

A. The chart marked K and L are enlargements of right middle finger impression of Thompson and one of the latent impressions on can No. 12.

(Testimony of Albert B. Ground.)

Mr. Schnacke: I will ask that the photographs just identified by the witness be marked Government's Exhibit next in order for identification.

(The photographs referred to were thereupon marked Government's Exhibit No. 101 for [315] identification.)

The Witness: The next chart is chart E and F. E is number 3 fingerprint impression, the right middle finger impression of Carl Ross, and one of the latent impressions on can No. 8.

Mr. Schnacke: I will ask that that group be marked Government's Exhibit next in order for identification.

Mr. Gladstein: I do not like to interrupt the tempo, Your Honor, but I did not get a chance to look at them. Counsel has advised me he does not have copies of them.

The Court: They are only being marked for identification now.

(The photographs referred to were thereupon marked Government's Exhibit No. 102 for identification.)

The Witness: Exhibit G and H, Exhibit I and J is an enlargement of the right thumbprint of Shirley Kremen, and one of the latent impressions on can No. 5.

Mr. Schnacke: I will ask that that be marked for identification as Government's next in order.

(Thereupon group of photographs referred to above were marked Government's Exhibit No. 103 for identification.)

(Testimony of Albert B. Ground.)

The Witness: Exhibits G and H are, or rather enlargements G and H, G is an enlargement of the right index finger [316] impression of Patricia Blau and the latent impression on can No. 7.

Mr. Schnacke: I will ask that the Patricia Blau prints be marked for identification with the Government's number next in order.

(Thereupon group of photographs referred to was marked Government's Exhibit No. 104 for identification.)

Mr. Schnacke: I would like, if Your Honor please, to have the witness explain the similarities in the last one as a further example of his method of comparison.

Q. Will you explain to the ladies and gentlemen of the jury the items of similarity that you discovered on those?

The Court: To what is he referring? You said the last one but you did not identify it.

Mr. Schnacke: I am referring to the photographs of fingerprints of Patricia Blau, Government's Exhibit No. 104.

The Witness: Chart G is an enlargement of the right index finger impression appearing on the fingerprint chart of Patricia Blau. H is an enlargement of the latent impression appearing on can No. 7. The similarity or the same points of similarity appear as your ending ridges, bifurcations, short ridges and enclosures or islands.

Point No. 1 is an ending ridge going up at this point right here (indicating), and drops down to

(Testimony of Albert B. Ground.)

Point 12 again, [317] because it is immediately adjacent to Point No. 1. It is to the right, down just a little.

The same thing occurs on Chart No. H, which is the latent impression No. 1 and No. 12. The ridges go upward and ending, one adjacent to the other.

Going over from Point No. 1 to the right, another ending ridge is Point No. 2, one, two, three, four ridges over, ending going forward.

Point No. 3, down to the right, the next ridge over, is Point No. 3, the very next ridge over.

And then one ridge inside and to the right, Point No. 4, those are all ending ridges going to the left and stopping right where the point is marked.

Point No. 5, two ridges down from Point No. 4, two ridges, the ridge going down to the right—rather than upward, it is going downward. The same thing occurs on Chart G as on Chart H. Down to the left, the ridge coming downward.

Point No. 6, four ridges over, on each chart, Point No. 6. To the left, one, two, ridges, there is a triangular formation at the delta—known to the fingerprint men as a delta formation, taken from the Greek letter “D”—a triangle right here. That is Point 7.

Point 8, Point 9, three parts of the triangle, the same thing occurs on Chart H as on Chart G. [319]

To the right is Point 10, a bifurcation coming downward just to the left of that. One ridge over is Point No. 11.

Point No. 12 I have already explained, which is

(Testimony of Albert B. Ground.)

two ridges over from Point No. 11. All points are in a similar location on each chart.

Q. Will you tell me, sir, how many points of identity are necessary to establish the identity of fingerprints?

Mr. Gladstein: That calls for a conclusion, if Your Honor please, what is necessary.

The Court: He is testifying as an expert, an opinion witness. Overruled.

A. That would depend upon the impressions themselves. I would have to see the impression to determine how many points of similarity. Certain characteristics appear in impressions. Sometimes there are more in one than in another. We may take a square inch of one impression, that is, of one finger. You may find 12 or 15 points of similarity or points of identity in that square inch. On another fingerprint impression you may not find but two or three in that same area. So it would depend upon the type of characteristics, how many appear in a certain area, but as a standard we have set out 12. Some of the older technicians, who were pioneers in fingerprinting had established years ago that 12 were a sufficient number. Some say 6, some say 10, 9, and so forth. But we arrive at the opinion that 12 would [320] be satisfactory, 12 points of similarity with no dissimilarities which cannot be explained.

Q. Did you find 12 points of similarities on each of the fingerprint comparisons to which you testified?

(Testimony of Albert B. Ground.)

A. There are more than 12 points of similarity on each of the impressions which has been testified to.

Mr. Gladstein: I move to strike the last portion, if Your Honor please. He was asked if he found 12. The answer would be yes or no.

The Court: Overruled.

Mr. Schnacke: Q. Did you find any unexplained points of dissimilarity in any comparisons that you made? A. No, sir.

Mr. Schnacke: No further questions.

The Court: I think we perhaps should take the noon recess now.

Members of the jury, no doubt some members of the jury and perhaps other parties interested in this case may wish to engage in some observance of Good Friday tomorrow, and so when we assemble tomorrow, we will assemble at the usual time, 10 o'clock in the morning, but at 11:30 we will take a recess until 3 o'clock so as to give those who are so inclined an opportunity to engage in Good Friday observance.

We will reconvene now at 2 o'clock this afternoon.

(Thereupon a recess was taken to the hour of 2 o'clock p.m. this date.) [321]

ALBERT B. GROUND

resumed the stand, previously sworn.

Cross Examination

Mr. Gladstein: Q. Mr. Ground, I believe you said that you examined some 5,000,000 fingerprints during the course of your 30 years in this business.

A. Yes, sir.

Q. And I suppose it is on that experience that you have told this jury that fingerprints of two different people are never exactly the same?

A. That is correct.

Q. Every person has fingerprints that, in one respect or another, differ from the fingerprints of some other person?

A. That is right.

Q. At the same time, there are points or degrees of similarity between the fingerprints of myself and yourself, perhaps, isn't that so?

A. Yes, sir.

Q. What would you say, based on your experience, would be the possible number of points of similarity that might be found, say, in the index finger of my right hand, print of that, and yours?

A. The number of points of similarity? [322]

Q. Yes.

A. The characteristics used, there are only four characteristics used as I stated heretofore, end ridges, bifercations, short ridges and enclosures or islands. Those may appear, but they won't appear in exactly the same place.

Q. But my question was this: Any finger—my finger—let's take that as an example—would have

(Testimony of Albert B. Ground.)

ending ridges that would print just as yours would?

A. Correct.

Q. And would have bifurgations as well as yours? A. Yes.

Q. It would show short ridges, too, wouldn't it?

A. Yes.

Q. And it would show these, what you call islands, isn't that right? A. Yes, sir.

Q. If you and I were, simply as a matter of experiment, to have a print taken, based on your experience how many points of similarity would it be possible for you to find between my print and yours?

A. I have no idea how many could possibly. I would have to see them.

Q. I beg your pardon?

A. I would have to see them together to determine, but I wouldn't have any idea how many possibilities. According to [323] the writers and the—some of the individuals who have written textbooks on fingerprints, the possibility of two fingerprints being the same is 1 followed by 60 digits. The number of characteristics.

Q. Yes, the number of characteristics, similarities.

A. There are only four possible characteristics. How many times they would appear between your finger and mine is impossible for me to determine without looking at both.

Q. Well, Mr. Ground, I realize that I don't have anything specific, but I am asking you, based on

(Testimony of Albert B. Ground.)

your own experience, isn't it so that you have found points of similarity—points of similarity between the fingerprints of different people?

A. Oh, yes.

Q. Yes. I am asking you now whether you can't give us some general idea—I am not asking about the similarity between your print and mine now as a matter of fact, but simply for the purpose of illustration, how many points of similarity do you think would be possible, and give us a range, to find between a print of mine and a print of yours taken from the same finger, the right index finger.

A. Oh, there may be several points of similarity.

Q. But how many?

A. But in addition there will be several points of dissimilarity.

Q. I will come to that in a moment. First, I am asking you [324] about points of similarity. Could there be as many as 20 or 30?

A. Oh, no, sir. Maybe two or three. Possibly two or three. Even four, possibly. In a general way it could be four.

Q. Not more than four?

A. Oh, there could be more than four. I wouldn't be able to say without examining the impressions.

Q. Could be as many as eleven points of similarity between your fingerprints and mine, couldn't there?

(Testimony of Albert B. Ground.)

A. Not without any dissimilarity there. Not in my experience.

Q. You have told us you as a rule look for twelve points of similarity, didn't you?

A. Yes, sir. That is standard. That doesn't necessarily mean there has to be twelve points of similarity in order to be made by the same person.

Q. Oh, no.

A. That would depend on the number of characteristics in the given area.

Q. When you talk about—. Let's take this. You understand, I am not a fingerprint expert, so if—

A. (Interposing) I am trying to help.

Q. I know you are, and you will help me more if you will go along with me and take it in one, two, three, simple ABC fashion, because this isn't a field in which I claim to be an expert. [325]

All I am trying to ask you now, if I put my finger here I will leave a print of some kind, won't I? A. Yes.

Q. And if you put the corresponding finger on your right hand—this happens to be the right index—you would leave a print?

A. Yes.

Q. Then if you photographed the two of those and enlarged it considerably so that you could examine them, probably under some microscope, you would find points of similarity between those prints, wouldn't you?

A. Yes, sir, possibly. Possibly. May not be.

(Testimony of Albert B. Ground.)

Q. Well, might the one or even two completely different types of fingerprints. But possibly there could be similarities? A. Yes, sir.

Q. And I am asking you now if it isn't so you might find as many as ten or eleven points of similarity between your print and my print?

A. I don't believe I would find eleven.

Q. Might find ten?

A. Possibly ten. Maybe eleven. Maybe even eleven points of similarity.

Q. And when you talk about points of similarity, would you try to tell us in a way we can clearly understand what you mean by a point of similarity? [326]

A. The characteristics, as I stated before, ending ridges in exactly the same place on both impressions. There will be, just like this street is named Jones Street here and the next is named Market Street, in order to be the same street, they would have to be in the same place on the map. That is the same thing with fingerprints. Same lines going a certain length and stop.

Q. That is the ending ridge?

A. That is the ending ridge, that is right. Could bifercate or diverge or converge at certain points. They separate. One ridge separate into two.

Q. Yes?

A. And that is what is known as bifurcation.

Q. All right.

A. Another point of similarity. Those will ap-

(Testimony of Albert B. Ground.)

pear exactly in the same place in each impression.

Q. And the short ridge is what?

A. Just like it says, a short ridge. Like a street that runs a block and no further.

Q. In other words, you find in the area that you are examining a line or ridge that seems to be short, isn't connected with some other line in the immediate vicinity?

A. That is correct.

Q. And an island, what is that?

A. That is just an enclosure. It is one ridge that separates [327] into two, then converges again or joins together and makes an island or enclosure.

Q. The term you have used today, "point of similarity", have you used it to indicate any one or more of these four things, that is, ending ridge, bifercation, short ridge and island?

A. Yes, sir.

Q. So that when you look at prints, it is correct, isn't it, that you just don't look to see whether the ending ridges seem to be the same, but you look for all four, don't you?

A. Correct.

Q. And so I take it from your answer, the answer you gave us a while ago when you said you didn't think you would find eleven points of similarity between, not necessarily my prints, but two sets of prints, two different people, but you might find ten, those different points of similarity would include such things as the ending ridges, bifercations, the short ridges and islands?

A. Yes, sir.